(17,732.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 262.

THE SUN PRINTING AND PUBLISHING ASSOCIATION, PETITIONER,

vs.

WILLIAM L. MOORE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Second Circuit.

WILLIAM L. MOORE, Libellant, Appellant,
vs.
THE SUN PRINTING AND PUBLISHING ASSOCIATION, Respondent, Appellant.

Transcript of Record.

Appeal from the district court of the United States for the southern district of New York.

[Stamped ·] United States circuit court of appeals, second circuit. Filed Dec. 8, 1899. William Parkin, clerk.

1 U. S. District Court, Southern District of New York.

WILLIAM L. MOORE, Libellant, Appellant,
against
THE SUN PRINTING AND PUBLISHING ASSOCIATION, Respondent, Appellant.

Statement.

1898.
Nov. 16. Libel filed.
Dec. 29. Answer filed.
1899.
April 14. Cause tried before Hon. Addison Brown, U. S. dist. judge.
June 28. Opinion rendered directing decree to be entered for libellant for $65,000, interest and costs.
Aug. 24. Final decree entered.
Sep. 9. Notice of appeal filed by libellant.
" 8. Notice of appeal filed by respondent.

2 To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

The libel of William L. Moore against the Sun Printing and Publishing Association, a corporation organized and existing under the laws of the State of New York, and doing business in and being a resident of the district aforesaid, in a cause of contract, civil and maritime, alleges as follows:

First. That at and prior to the dates hereinafter mentioned the respondent corporation was engaged in the business of printing and publishing a daily newspaper in the city of New York, known as the New York Sun, and that a part of the business of said respondent consisted in the procuring and publishing of information and news to the readers of said paper respecting events and occurrences happening from time to time within the United States and elsewhere.

Second. That prior to the first day of April, 1898, the inhabitants of the island of Cuba, then owned by the Kingdom of Spain, were and had been in a state of insurrection and rebellion, and on or

about the date aforesaid, the respondent, in order to enable its employees and representatives to observe, so far as practicable, the various incidents and occurrences connected with such rebellion, for the purpose of procuring the publication thereof in said newspaper, did through its agent, Chester S. Lord, make and conclude at the city of New York, through libellant's agent, Thomas Manning, a charter-party with the libellant, who was then the owner of the steam yacht *Kanapaha*, then in the port of New York, wherein and whereby the libellant, for and in consideration of the covenants and agreements therein mentioned to be kept and performed by the said respondent, did charter and hire to the respondent the said yacht in the condition that she then was and with all her gear, tackle and furnishings, as they then were for the term of two months from the 1st day of April, 1898, to and until the 1st day of June, in
3 said year, for the sum of $5,000, which amount was paid by respondent to libellant's agent on the execution of said charter-party.

Third. That said respondent for and in consideration of the covenants and agreements to be kept and performed by the said libellant chartered and hired the said yacht for the period aforesaid and covenanted and agreed to pay the sum above mentioned to the libellant, or his agent, for such hire, and further covenanted and agreed, among other things, as follows, that is to say:

1. To overhaul and repair and put said yacht in commission at its own expense.

2. To keep in repair at its own costs and expense said yacht, its hull, tackle, spars, furniture, gear and boats during the continuance of said charter-party.

3. To pay all running expenses of said yacht, including amongst other things uniforms, wages, provisions, pilotage, tonnage, light-house and port dues and any and all other dues and charges during the continuance of said charter-party.

4. To surrender said yacht with all its gear, furniture and tackle, at the expiration of the term of said charter-party to said libellant, or his agent, at Manning's basin, foot of 26th street, South Brooklyn, in the port of New York, in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted, and free and clear of any and all indebtedness, liens or charges of any kind or any description.

5. To use said steam yacht as a yacht only and under no circumstances to use her to carry freight, merchandise or passengers for hire, or to do anything in contravention of its status as a yacht, or to do anything in the sailing or navigating of the same in contravention of the laws of the United States or of any foreign country.

Fourth. That in and by said charter-party said respondent expressly guaranteed and insured the safety of said yacht and agreed to be responsible for its safe delivery to the libellant at the
4 expiration of said charter-party as aforesaid, and to be and become liable and responsible for any and all loss and damage to the hull, machinery, equipment, tackle, spars and furniture belonging or appurtenant to said yacht; and it was also agreed that

the reasonable value of said yacht was $75,000, in case of its loss during the existence of said charter, and that said respondent would procure security or guarantee to and for the libellant in the sum of $75,000 to secure any and all losses and damages which might occur to said yacht or its belongings which might be sustained by the libellant by reason of such loss or damage, and by reason of the breach of any of the terms or conditions of said charter-party.

Fifth. That on or about said 1st day of April, 1898, said respondent, by its said agent Chester S. Lord, pursuant to the terms and provisions of the charter-party aforesaid, executed and delivered to the libellant an agreement of suretyship conditioned that the said respondent would well and faithfully perform and fulfill all and singular the terms and conditions of said charter-party on its part to be kept and performed upon the understanding that the liability thereunder should in no case exceed the sum of $75,000.

Sixth. That on or about said first day of April, 1898, said libellant, by his agent aforesaid, delivered said yacht and appurtenances to said respondent pursuant to the terms and provisions of the charter-party aforesaid; and that thereafter said respondent, at its own expense, put said yacht in commission, made such repairs as were necessary to that end, and assumed the sole control, management and navigation of said yacht and hired the officers, engineers and crew therefor and furnished all necessary provisions, coal and other supplies; and that said yacht thereupon proceeded from the port of New York to the West Indies.

Seventh. That thereafter and prior to the 14th day of May war was declared between the United States of America and the Kingdom of Spain, arising from and by reason of the condition of affairs in the island of Cuba as aforesaid, and on or about said last-mentioned date, and while the said yacht was still in its possession under the terms and provisions of the charter-party above mentioned, the respondent, in order to enable its employees and representatives to observe, so far as practicable, the military and naval operations in the vicinity of said island of Cuba for the purpose of procuring the publication thereof in said newspaper, did on or about the date last above mentioned, through its agent Chester S. Lord, make and conclude at the city of New York with the libellant (who was still the owner of said yacht) through his agent Thomas Manning, a second charter-party bearing date on said day, wherein and whereby the libellant, for and in consideration of the covenants and agreements therein mentioned to be kept and performed by the said respondent, did let the said yacht and appurtenances as aforesaid in the condition that they then were for the term of four months from the 1st day of June, 1898, to and until the 1st day of October, in said year, for the sum of $10,000, which amount was paid by respondent to libellant's said agent on the execution of said charter-party.

Eighth. That said respondent for and in consideration of the covenants and agreements to be kept and performed by the said libellant, chartered and hired the said yacht for the period aforesaid and covenanted and agreed to pay the sum above mentioned to the

libellant or his agent, for such hire, and further covenanted and agreed, among other things, as follows, that is to say:

1. To keep in repair at its own cost and expense said yacht, its hull, tackle, spars, furniture, gear and boats during the continuance of said charter-party.

2. To pay all running expenses of said yacht, including, amongst other things, uniforms, wages, provisions, pilotage, tonnage, light-house and port dues and any and all other dues and charges during the continuance of said charter-party.

3. To surrender said yacht with all its gear, furniture and
6 tackle at the expiration of the term of said charter-party to said libellant or his agent at Manning's basin, foot of 26th street, South Brooklyn, in the port of New York, in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted, and free and clear of any and all indebtedness, liens or charges of any kind or of any description.

4. To use said steam yacht as a yacht only and under no circumstances to use her to carry freight, merchandise or passengers for hire, or to do anything in contravention of its status as a yacht, or to do anything in the sailing or navigating of the same in contravention of the laws of the United States or of any foreign country.

Ninth. That in and by said last-mentioned charter-party said respondent expressly guaranteed and insured the safety of said yacht and agreed to be responsible for its safe delivery to the libellant at the expiration of said charter-party as aforesaid, and to be and become liable and responsible for any and all loss and damage to the hull, machinery, equipment, tackle, spars and furniture belonging or appurtenant to said yacht; and it was also agreed that the reasonable value of said yacht was $75,000, and in case of its loss during the existence of said charter, *and* that said respondent would procure security or guarantee to and for the libellant in the sum of $75,000 to secure any and all losses and damages which might occur to said yacht or its belongings, which might be sustained by the libellant by reason of such loss or damage, and by reason of the breach of any of the terms or conditions of said charter-party.

Tenth. That on or about said 14th day of May, 1898, said respondent, by its said agent, Chester S. Lord, pursuant to the terms and provisions of the charter-party last above-mentioned, executed and delivered to the libellant an agreement of suretyship conditioned that the said respondent would well and faithfully perform and fulfill all and singular the terms and conditions of said charter-party on its part to be kept and performed upon the understanding that the liability thereunder should in no case exceed the sum of $75,000.

7 Eleventh. That soon after the delivery of said yacht to the respondent, on April 1st, 1898, as aforesaid, she proceeded from the port of New York to the West Indies, and thereafter and prior to her loss as hereinafter mentioned said yacht was used, as libellant is informed and believes, for the purpose of enabling the representatives of the respondent and also the representatives of the publishers of various newspapers and other publications in the city

of New York to observe the naval and military operations in the vicinity of the island of Cuba and thereby securing the publication of the information so secured as aforesaid.

Twelfth. That the libellant has always since said 1st day of April, 1898, well and truly performed and kept all and singular the covenants and undertakings on his part according to each of the said charters aforesaid to be performed and kept, but the respondent has not well and truly performed and kept all and singular the covenants and undertakings on its part according to said charter-party of May 14th, 1898, to be performed and kept, in that said respondent has failed and neglected to surrender and deliver said yacht to this libellant or his agent, as provided in said charter-party and in that said yacht while in the charge and control of said respondent, its agents or servants as aforesaid, was wrecked and is a total loss, as libellant is informed and believes.

Thirteenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore, the libellant prays that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said Sun Printing and Publishing Association and that said company may be required to answer on oath this libel and the matters herein contained, and may be cited to appear and answer such interrogatories as may be propounded to it by the libellant, and that this honorable court will be pleased to decree the payment of the
8 amount so due to the libellant as aforesaid, to wit, the sum of $75,000, with interest from October 1st, 1898, and costs, and that the said Sun Printing and Publishing Association be required to pay the same and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

WILLIAM L. MOORE.

Sworn to before me this 16th day of November, 1898.

[SEAL.] OWEN FITZSIMMONS,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

ZABRISKIE, BURRILL & MURRAY,
Proctors for Libellant.

Interrogatories Propounded to the Respondent, The Sun Printing and Publishing Association, which it is Required to Answer in Writing, under Oath.

First interrogatory. Was the respondent, at the dates mentioned in the foregoing libel, engaged in the business of printing and publishing a daily newspaper in the city of New York, known as the New York Sun? Was it a part of the business of said respondent to procure and publish in said newspaper information and news respecting events and occurrences happening from time to time within the United States and elsewhere? Was it also a part of the busi-

ness of said respondent to employ reporters and other persons for the purpose of procuring such news in various parts of the United States and elsewhere? Was it also a part of the business of said respondent to employ such suitable and requisite means as might be necessary to enable its reporters and representatives to procure such information and news?

Second interrogatory. Have the board of directors of the respondent at any time, either before or after the declaration of war between the United States of America and the Kingdom of Spain, authorized any officer, agent or employee of the respondent to
9 take any steps in regard to the procuring of news or information for publication in said newspaper relative to the condition of affairs in the vicinity of the island of Cuba? If yes, then attach to the answer to this interrogatory a copy of the resolution adopted, or the authority so given. Has the question of the propriety or advisability of sending persons to procure such news or information for publication as aforesaid received consideration at any time as at a meeting of the board of directors of the respondent corporation? If yes, then attach to the answer hereto a copy of such portion of the minutes of such meeting as relate to these matters.

Third interrogatory. What are the names of the various directors and officers of the respondent?

Fourth interrogatory. Have any instructions or directions been given at any time as aforesaid by any officer or director of the respondent to any agent, employee or other officer in reference to the sending of reporters or other representatives of the respondent to obtain news or information for publication in said newspaper, relative to the condition of affairs in the vicinity of the island of Cuba; and if so, state what such instructions or directions were, and by whom and to what officer, agent or employee they were so given.

Fifth interrogatory. At the times mentioned in said libel was Chester S. Lord in the employ of said respondent, and if so, in what capacity? What were the duties of said Lord, and if any such duties were defined in the by-laws or in writing, then attach to the answer hereto a copy of such portion thereof as relates to these matters? What were the powers and duties of said Lord in regard to the procuring of news and information for publication in said newspaper, and to the hiring of reporters and other persons, and the employment of such other means as might be necessary to procure such news and information?

Sixth interrogatory. What instructions or directions did said Chester S. Lord at any time as aforesaid receive from the
10 board of directors or from any officer or agent of the respondent in regard to procuring information or news for publication as aforesaid relative to the condition of affairs in the vicinity of the island of Cuba, or in regard to the sending of reporters or other employees of the respondent to obtain such news or information or in regard to the employment of such suitable and requisite means as might be necessary to enable said reporters and other em-

ployees to procure such news or information? If so, then state from whom were such instructions or directions received?

Seventh interrogatory. What were the respective dates of the checks for $5,000 and $10,000 given to Thomas Manning on or about April 1st and May 14th, 1898, respectively, in payment of the charter moneys reserved by the two charters mentioned in the libel herein? By whom were such checks signed, and what was the signature to the same? Were such checks drawn upon funds belonging to the respondent? In what report or reports, statements of account or financial statements were the amounts of these checks entered? What was the course of business of the respondent in relation to posting entries from the stubs in said check book. Were the entries on the stubs of the two checks above mentioned posted in books of account, and if so, what were the names of such books and what officer of the respondent had charge or supervision thereof?

Eighth interrogatory. What was done by the agents of the respondent in April, 1898, in order to put said yacht *Kanapaha* in commission? Was she put in dry dock, and if so, where? Was she repaired, painted, coaled and provisioned prior to her departure from the port of New York, and if so, what officer or agent of the respondent attended to these matters and gave orders in regard thereto? Were the expenditures so made paid for by checks upon funds of the respondent, and if so, then how and by whom were such checks signed?

Ninth interrogatory. Did the respondent, through its agent or representative, employ the master, officers, engineers and crew of said yacht, and if so, give the name and position of such agent or representative?

11 Tenth interrogatory. Were any reporters employed by the respondent on board of said yacht during any of the time between April 2nd and September 5th, 1898? If so, for how long and what were their duties?

Eleventh interrogatory. Were any reporters or representatives of any newspaper or publication other than the New York Sun on board of said yacht during any of the time between April 2nd, 1898, and September 5th, 1898; if so, during what period of time? What officer or agent of the respondent arranged for the transportation of such representatives of other newspapers or publications? Were payments made to the respondent by such other newspapers or publications for the transportation and privileges aforesaid on said yacht, and if so, to what officer or agent of the respondent were such payments made, and if by check, to whose order were such checks drawn and what officers or agents of the respondent had to do with any of the negotiations leading up to such payment? Did the amount of such payments go to the credit of the respondent in bank?

Twelfth interrogatory. Were any items of information or news furnished by the respondent or any of its officers or agents to any newspaper other than the New York Sun, and if so, was payment made therefor to the respondent? What officer or agent of the respondent had to do with any of the negotiations leading up to the

furnishing of such news or information, or the payment therefor? Was such payment made by check or checks? If so, to whose order were such checks drawn, and did the amount thereof go to the credit of the respondent?

Thirteenth interrogatory. Was said yacht at any time between April 2nd, 1898, and September 5th, 1898, insured by or on behalf of the respondent, and if so, in whose favor was such insurance taken out, and when and for how long a period was such insurance effected? What was the amount of such insurance? What officer or agent of the respondent took out such insurance? Were
12 the premiums paid by funds of the respondent? What were the dates of the payment of such premiums, and if by a check, how and by whom were such checks signed?

Fourteenth interrogatory. Did said Chester S. Lord at any time after April 1st, 1898, inform or make any report to any officer, director or agent of the respondent, or to its board of directors in relation to the chartering of the yacht *Kanapaha*, or in relation to the sending of reporters or other employees of the respondent to obtain news or information for publication in said newspaper relative to the condition of affairs in the vicinity of the island of Cuba? If so, what was the tenor of such information or report, and if in writing, then attach to the answer hereto a copy thereof? Was it a part of the duty of said Lord to make returns or reports from time to time to any officer, director or agent of the respondent as to checks drawn and issued by him, or moneys expended by him on behalf of the respondents? Did said Lord make any return or report subsequent to April 1st, 1898, of any checks drawn and issued by him or moneys expended by him in payment of the charter moneys reserved by the two charters mentioned in said libel or in payment of the expenses incident to putting the yacht *Kanapaha* in commission, or in payment of provisions, coal and other supplies for use on said yacht, or in payment of wages of the master, engineers and crew thereof? If so, how many such reports were made after April 1st, 1898? Were such returns given orally or in writing, and when and to whom were they made respectively? Were such items of expenditure audited and approved by any officer or director or agent of the respondent, and if so by whom, and what are the respective dates of such audit and approval?

Fifteenth interrogatory. Were the items of expenditure mentioned in the last interrogatory included in any report or statement of the treasurer or other financial officer of the respondent, and if so, when and to whom were such reports or statements made? Were they acted upon by any committee appointed by the board of di-
13 rectors or stockholders of the respondent? What was the name of such committee, and what officers or directors of the respondent were members of such committee? What were the duties of such committee, and if these were fixed by the by-laws of the respondent, then attach to the answer hereto a copy of the by-laws relating thereto. How many reports or statements has the treasurer or other financial officer of the respondent made since April 1st, 1898, to any such committee or to the board of directors? When

were such statements and reports made and on what date or dates were they submitted respectively?

Sixteenth interrogatory. Have any of the items of expenditure mentioned in the fourteenth interrogatory been submitted to the board of directors of the respondent, or the executive or other committee appointed by such board, or by the stockholders, or to any officer of the respondent? If so, what action, if any, was taken in regard to the same respectively, and upon what dates were such items so submitted?

Seventeenth interrogatory. Was there any agent or employee of the respondent on board of said yacht between April 1st, 1898, and September 5th, 1898, authorized to expend moneys on behalf of the respondent in payment for provisions, coal, supplies, wages and running expenses? If so, from whom did such agent or employee receive authority to make such payments, and in what manner and by whom were moneys transmitted to him for such purposes? To whom did he report in regard to such payments, and what action if any was taken in regard to such items of expenditure by any officer or committee, or by the board of directors of the respondent?

Dated November 16th, 1898.

ZABRISKIE, BURRILL & MURRAY,
Proctors for Libellant.

(Endorsed:) Libel. Filed Nov. 16, 1898.

14 To the Honorable Addison Brown, judge of the district court of the United States for the southern district of New York:

The Sun Printing and Publishing Association, a corporation organized and existing under the laws of the State of New York, the respondent named in the libel of William L. Moore against The Sun Printing and Publishing Association in a cause of contract alleged to be in said libel, civil and maritime, answers said libel and complaint as follows:

First. The respondent admits the allegations of the first article of said libel.

Second. The respondent admits that prior to the first day of April, 1898, the inhabitants of the island of Cuba, then owned by the Kingdom of Spain, were and had been in a state of insurrection and rebellion, but it denies that on or about the date aforesaid, or at any other time, the respondent in order to enable its employees or representatives to observe as far as practicable or otherwise, the various incidents or occurrences connected with such rebellion or otherwise, or for the purpose of procuring the publication thereof in the New York Sun or for any other purpose, did make or conclude at the city of New York, through libellant's agent, Thomas Manning, or with any other person, a charter-party with the libellant as set forth in the second article of the libel, and the respondent further denies that it, at any time, made or concluded with the libellant, or with any agent of the libellant, any charter-party whatsoever, either as set forth in the second article of the libel or otherwise.

The respondent admits that an alleged contract was made by one

Chester S. Lord with the libellant herein, but it avers and alleges that the said Chester S. Lord was not the agent of the respondent The Sun Printing and Publishing Association in making or concluding any charter-party with the libellant or with any other person, and that any alleged contract for the hire or employment of the said steam yacht *Kanapaha* made by the said Chester S. Lord
15 was made on his own individual responsibility, and without any right or authority to represent the respondent therein, and that the respondent was not and is not bound by any of the alleged covenants or agreements or conditions or stipulations in the said alleged contract or charter-party.

The respondent admits that the sum of $5,000 was paid by said Chester S. Lord to libellant on the execution of said alleged charter-party, but it avers and alleges that the said payment of the said sum of $5,000 was made by the said Chester S. Lord without any warrant or authority so to make such payment on the part of the respondent corporation, and the respondent denies that said sum of $5,000 was paid by the respondent to the libellant's agent or by its authority.

Third. The respondent denies that for and in consideration of the covenants or agreements to be kept or performed by the said libellant it chartered or hired the said yacht for the period aforesaid or covenanted or agreed to pay any sum to the libellant or his agent for such hire, and it denies that it further covenanted or agreed, among other things, to keep the various agreements or to do the various things set forth in subdivisions 1, 2, 3, 4, and 5 of the third article of the libel herein.

Fourth. The respondent denies that in or by said alleged charter-party, it, the respondent, guaranteed or insured the safety of said yacht or agreed to be responsible for its safe delivery to the libellant at the expiration of said alleged charter-party, or to be or to become liable or responsible for any or all loss or damage to the hull, machinery, equipment, tackle, spars or furniture belonging or appurtenant to said yacht; and it further denies that it, the respondent, also agreed that the reasonable value of said yacht was $75,000, or any other sum whatsoever, in the event of the loss of said yacht during the existence of said alleged charter, or that said respondent would procure security or guarantee to or for the libellant in the sum of $75,000 or in any sum to secure any or all losses or damages which might occur to said yacht or its belongings which might be sustained by the libellant by reason of such loss or damage,
16 or by reason of any breach of any of the terms or conditions of said alleged charter-party.

Fifth. The respondent denies that on or about the 1st day of April, 1898, it, pursuant to the terms and provisions of said alleged charter-party or contract or otherwise, either by Chester S. Lord or any other person, executed or delivered to the libellant an agreement of suretyship or any agreement whatsoever, but it avers that if any agreement of suretyship was made by the said Chester S. Lord, he acted on his own and individual responsibility, and that the said Chester S. Lord was not the agent of this respondent in making said

agreement of suretyship, and he had not been authorized by the respondent to make such agreement of suretyship.

Sixth. The respondent admits that on or about the first day of April, 1898, the libellant delivered his said yacht and appurtenances to certain employees of the respondent, but it denies on information and belief that the yacht or appurtenances was or were so delivered pursuant to the terms or provisions of the said alleged charter-party. And the respondent further admits that it put said yacht in commission, made such repairs as were necessary to that end, and furnished all necessary provisions, coal and other supplies, and that said yacht thereupon proceeded from the port of New York to the West Indies. The respondent denies on information and belief that it assumed the control or navigation of said yacht or hired the officers, engineers or crew therefor, but it avers and alleges on information and belief that Captain Packard assumed the management and navigation of said yacht and hired the officers, engineers and crew therefor.

Seventh. The respondent denies that on or about the 14th day of May or at any time prior thereto or subsequent thereto, in order to enable its employees or representatives to observe the military or naval operations in the vicinity of said island of Cuba for the purpose of procuring the publication thereof in its said newspaper
17 or for any other purpose, it did, through its agent, Chester S. Lord, or through any other person, make or conclude with the libellant a second charter-party or any other charter-party. The respondent avers and alleges that if any alleged second charter-party was made by Chester S. Lord with the libellant, it was made by the said Chester S. Lord on his own individual responsibility and without any right or authority to represent the respondent therein, and that the respondent was not or is not bound by any of the alleged covenants or agreements in said alleged second charter-party mentioned. The respondent admits that the sum of $10,000 was paid thereafter by the said Chester S. Lord to the libellant, but it avers and alleges that the said payment of the said sum of $10,000 was made by the said Chester S. Lord without any warrant or authority so to make such payment on the part of the respondent corporation.

Eighth. The respondent denies that for or in consideration of the covenants or agreements to be kept or performed by the said libellant or otherwise, it chartered or hired the said yacht, or that it covenanted or agreed to pay the sum above mentioned to the libellant or his agent, for such hire or any other hire, or that it covenanted or agreed among other things to do the various things set forth in subdivisions 1, 2, 3 and 4 of the eighth article of this libel.

Ninth. The respondent denies that in or by the said alleged charter-party it, the respondent, expressly guaranteed or insured the safety of said yacht, or that it agreed to do any of the various things set forth in the ninth article of this libel; but it avers and alleges that on the contrary, it, the respondent, made no alleged charter-party or contract with the libellant, but that any alleged charter-party which was made by the said Chester S. Lord with the

libellant or his agent was made by the said Chester S. Lord on his own responsibility, and without any warrant or authority so to do on the part of the respondent corporation or its trustees.

Tenth. The respondent denies that on or about the 14th
18 day of May, 1898, or at any other time, it executed or delivered to the libellant said agreement of suretyship or any other agreement of suretyship on the terms and conditions set forth in the tenth article of this libel, or on any other terms or conditions whatsoever; but it avers and alleges that any alleged agreement of suretyship executed and delivered to the libellant by said Chester S. Lord was executed and delivered by the said Chester S. Lord on his own responsibility, and was executed or delivered without any warrant or authority so to do on the part of the respondent corporation.

Eleventh. The respondent admits that the said yacht did proceed from the port of New York to the West Indies, and was used for the purpose of enabling the representatives of the respondent and also the representatives of other newspapers to observe the naval and military operations in the vicinity of the island of Cuba.

Twelfth. The respondent denies any knowledge or information sufficient to form a belief as to whether the libellant has always since the 1st day of April, 1898, well and truly performed the covenants or undertakings set forth in the said alleged charter-party, and the respondent denies that it has failed to well and truly perform any agreements or covenants on its part by it at any time made with libellant. The respondent admits that the said yacht has not been surrendered or delivered to libellant, and it admits that the said yacht was wrecked and is a total loss.

Thirteenth. The respondent denies that all and singular the premises set forth in the libel herein are true or that they are within the admiralty or maritime jurisdiction of the United States and of this honorable court.

Fourteenth. Further answering and for a further and separate defense the respondent alleges that both of the said alleged contracts or so-called charter-parties alleged to have been made
19 by the said Chester S. Lord with the libellant or his agent, and the alleged agreement of suretyship alleged to have been made by the said Chester S. Lord with the libellant were and each of them was made, executed and delivered by the said Chester S. Lord on his own responsibility and without any warrant or authority so to do on the part of the respondent corporation, The Sun Printing and Publishing Association, or of its board of trustees; that the said alleged charter-parties and the said agreement of suretyship were not authorized by or was any one of them ever authorized by the board of trustees of the respondent, The Sun Printing and Publishing Association, to be made or executed, and that the said Chester S. Lord in the making and execution of said charter-parties or either of them, and in the making of the said agreement of suretyship acted on his own responsibility.

And the respondent further alleges and avers that the said alleged charter-parties and the said alleged contract of suretyship were not

ratified nor was any of them ever ratified or confirmed by the respondent or its board of trustees.

The first alleged charter-party is hereunto annexed, marked Exhibit A, and is made a part of this answer; the second alleged charter-party is hereunto annexed, marked Exhibit B, and is made a part of this answer; the alleged bond or agreement of suretyship is hereunto annexed, marked Exhibit C, and is made a part of this answer.

Fifteenth. Further answering and for a further and separate defense the respondent alleges on information and belief that the only liability on the part of the respondent corporation in or by reason of its user, at any time, of the yacht *Kanapaha* was limited to the fair and just value of such user, and that the full amount of such user had been paid to the libellant prior to the loss of said yacht, and prior to the commencement of this action or suit in admiralty; that the said yacht was lost off the coast of Cuba without any fault or negligence on the part of the respondent or its employees, in time of war through the act of the public enemy or by the act of God or a peril of the sea, and that the respondent was and is not in any way responsible for such loss.

Sixteenth. Further answering and for a further and separate defense to this libel, the respondent avers and alleges on information and belief that it appears on the face of the libel herein that this court of admiralty has no jurisdiction over the subject-matter of this controversy; that this is not a cause or case of admiralty or maritime jurisdiction, but that this action is simply an action on contract brought to recover money damages, and that it is a controversy between citizens and residents of the same State, to wit, the State of New York, and that the so-called charter-parties were not in reality charter-parties but were simply ordinary contracts made between one Thomas Manning and one Chester S. Lord who are not made parties to this controversy.

Seventeenth. Further answering and for a further and separate defense the respondent further avers and alleges on information and belief that this is a case where the common law is competent to give the suitors a remedy, and that the Revised Statutes of the United States provide in section 563 that the district courts shall have jurisdiction as follows: "Eighth. Of all civil cases of admiralty and maritime jurisdiction; saving to suitors in all cases the right of a common-law remedy, where the common law is competent to give it;" and that even if this be a civil cause of admiralty and maritime jurisdiction, the respondent is entitled to and does object to the jurisdiction of this court because the suitors herein have the right of a common-law remedy and the common law is competent to give it.

Wherefore, the respondent prays that said libel may be dismissed with costs.

FRANKLIN BARTLETT,
Proctor for Respondent, 82 Times Building,
Borough of Manhattan, New York City.

21 SOUTHERN DISTRICT OF NEW YORK, } ss:
County of New York, }

Thomas Hitchcock, being duly sworn, deposes and says that he resides in the city of New York; that he is the secretary of the respondent corporation, The Sun Printing and Publishing Association above named; that he has read the foregoing answer and the same is true to the knowledge of this deponent except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

THOMAS HITCHCOCK.

Sworn to before me this 28th day of December, 1898.

A. H. BRADLEY,
Notary Public, N. Y. Co.

EXHIBIT A.

Memorandum of agreement made and entered into this first day of April, 1898, by and between William L. Moore, of the city of New York, by Thomas Manning, his agent, party of the first part, hereinafter called the owner, and Chester S. Lord, of the city of New York, party of the second part, hereinafter called the hirer, witnesseth:

That the said William L. Moore, being the owner of the steam yacht *Kanapaha*, enrolled in the Atlantic Yacht Club, agrees to let and hereby does let, and the hirer agrees to hire and hereby does hire, the said yacht as she is now for the term of two months from this date expiring on the first of June now next ensuing for the sum of five thousand dollars ($5,000.00) payable on the signing of this agreement.

That the owner hereby agrees to deliver the said yacht in Manning's basin, in South Brooklyn, to the hirer or his representative as it now is with all its gear, tackle and furnishings, as they now are.

22 That the hirer will overhaul and repair and put said yacht in commission at his own expense and from now on until the expiration of this contract will pay all its running expenses including, amongst other things, uniforms, wages, provisions, pilotage, tonnage, light-house and port dues and any and all other dues and charges and will surrender said yacht with all its gear, furniture and tackle at the expiration of this contract to the owner or his agent, at Manning's basin, foot 26th street, South Brooklyn, New York, in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted and free and clear of any and all indebtedness, liens or charges of any kind or of any description.

That the hirer will use the said steam yacht as a yacht only and will under no circumstances use her to carry freight, merchandise or passengers for hire nor do anything in contravention of its status as a yacht, nor in the sailing or navigating of the same, do anything

in contravention of the laws of the United States or of any foreign country.

That for the purpose of this charter the value of the yacht shall be considered and taken at the sum of seventy-five thousand dollars ($75,000.00) and the said hirer shall procure security or guarantee to and for the owner in the sum of seventy-five thousand dollars ($75,000.00) to secure any and all losses and damages which may occur to said boat or its belongings which may be sustained by the owner by reason of such loss or damage and by reason of the breach of any of the terms or conditions of this contract.

That in the event of the failure of the hirer to return and surrender the said yacht to the owner as hereinafter provided, the hirer shall be charged demurrage and shall pay demurrage to the owner at the rate of five hundred dollars ($500.00) per day for each and every day's detention.

23 The hirer shall be liable and responsible for any and all loss and damage to hull, equipment, tackle, spars, furniture or the like. —

That the hirer during the continuance of this agreement shall at all times and at his own cost and expense keep the said yacht, its hull, tackle, spars, furniture, gear, boats and the like, in repair.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THOMAS MANNING,
Agent for William L. Moore, Owner.
CHESTER S. LORD,
For the Sun Printing and Publishing Company.

Exhibit B.

Memorandum of agreement made and entered into this 14th day of May, 1898, by and between William L. Moore, of the city of New York, by Thomas Manning, his agent, party of the first part, hereinafter called the owner, and Chester S. Lord, of the city of New York, party of the second part, hereinafter called the hirer, witnesseth:

That the said William L. Moore being the owner of the steam yacht *Kanapaha*, enrolled in the Atlantic Yacht Club, agrees to let and does hereby let, and the hirer agrees to hire and does hereby hire, the said yacht as she is now for the term of four months from the first day of June, expiring on the first day of October now next ensuing, for the sum of ten thousand dollars ($10,000.00) payable on the signing of this agreement.

That the hirer will carry out the provisions of the charter-party made on the first day of April last, and will until the ex-

24 piration of this contract keep said yacht in repair and will pay all its running expenses, including amongst other things, uniforms, wages, provisions, pilotage, tonnage, light-house and port dues and any and all other dues and charges, and will surrender said yacht with all its gear, furniture and tackle, at the expiration of this contract, to the owner, or his agent, at Manning's basin, foot

26th street, South Brooklyn, New York, in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted and free and clear of any and all indebtedness, liens, or charges of any kind or of any description.

That the hirer will use the said steam yacht as a yacht only and will under no circumstances use her to carry freight, merchandise or passengers for hire, nor do anything in contravention of its status as a yacht, nor in the sailing or navigating of the same do anything in contravention of the laws of the United States or of any foreign country.

That for the purpose of this charter the value of the yacht shall be considered and taken at the sum of seventy-five thousand dollars ($75,000.00) and the said hirer shall procure security or guarantee to and for the owner in the sum of seventy-five thousand dollars ($75,000.00) to secure any and all losses and damages which may occur to said boat or its belongings which may be sustained by the owner by reason of such loss or damage and by reason of the breach of any of the terms or conditions of this contract.

That in the event of the failure of the hirer to return and surrender the said yacht to the owner as hereinbefore provided, the hirer shall be charged demurrage and shall pay demurrage to the owner at the rate of five hundred dollars ($500.00) per day for each and every day's detention.

The hirer shall be liable and responsible for any and all loss and damage to hull, machinery, equipment, tackle, spars, furniture or the like.

That the hirer during the continuance of this agreement shall at all times and at his own cost and expense, keep the said yacht, its hull, machinery, tackle, spars, furniture, gear, boats and the like, in repair.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THOMAS MANNING,
Agent for Wm. L. Moore.
CHESTER S. LORD,
For Sun Printing and Publishing Association.

EXHIBIT C.

Whereas by agreement or charter-party dated May 14th, 1898, William L. Moore, of the city of New York, hereinafter called the owner, did or is about to hire or charter unto Chester S. Lord, of the city of New York, hereinafter called the hirer, the steam yacht *Kanapaha*, enrolled in the Atlantic Yacht Club, as will more fully and at large appear by a copy of said agreement or charter-party hereunto annexed and hereby made part hereof.

Now, at the request of the said hirer and for valuable consideration received from him, and in consideration of one dollar ($1.00) from the said owner received, and receipt whereof is hereby acknowledged,

We, The Sun Printing and Publishing Company, of the city of

York, for ourselves and each of us, our successor or successors, and for each of our executors or administrators, enter into the following understanding and agreement of suretyship.

First. That the said hirer will well and faithfully perform and fulfill everything in and by the said annexed agreement on his part to be kept and performed.

Second. That we expressly waive and dispense with notice of any demand, suit or action at law against the hirer and expressly waive any and all notice of non-performance of the terms of said annexed agreement on the part of the hirer to be kept and performed. The intention of this understanding being to hold us primarily liable under the terms of the annexed agreement.

26 Third. That our liability hereunto shall in no case exceed the sum of seventy-five thousand dollars ($75,000.00).

In witness whereof we have hereunto set our hands this 14th day of May, 1898.

CHESTER S. LORD,
For Sun Printing and Publishing Association.

STATE OF NEW YORK, }
County of New York, } ss.:

On this 14th day of May, 1898, before me personally appeared Chester S. Lord, to me known and known to me to be the managing editor of the Sun Printing & Publishing Company, and who duly acknowledged that he executed the above undertaking for and on behalf of his firm under authority of said company as its act and deed.

[SEAL.]

A. H. BRADLEY,
Notary Public, New York.

The respondent, The Sun Printing & Publishing Association, by Thomas Hitchcock, its secretary, answers to the interrogatories propounded as follows:

First. To the first three sentences or questions contained in the first interrogatory the respondent answers: Yes.

To the last question of the first interrogatory which reads: "Was it also a part of the business of said respondent to employ such suitable and requisite means as might be necessary to enable its reporters and representatives to procure such information and news?" the respondent answers as follows: It was a part of the business of the respondent corporation, The Sun Printing & Publishing Association, to employ such reasonable or requisite means as might be necessary to enable its reporters and representatives to procure information and news, but it was not a part of the business of the managing editor of the Sun, who, at the times set forth

27 in the libel herein, was Chester S. Lord, to make, execute or deliver contracts or alleged charter-parties for the hire of yachts or alleged agreements of suretyship in connection therewith.

Second. To the whole of the second interrogatory the respondent answers: No.

Third. To the third interrogatory the respondent answers: That the names of the officers of the respondent corporation are—president, Paul Dana, secretary Thomas Hitchcock, trustees, Paul Dana, Thomas Hitchcock, William M. Laffan, E. P. Mitchell and Franklin Bartlett.

Fourth. To the fourth interrogatory the respondent answers: No.

Fifth. To the fifth interrogatory the respondent answers: That at the times mentioned in said libel Chester S. Lord was in the employ of the respondent in the capacity of managing editor, and the duties of said Lord were a general oversight over the news columns of the papers. He hired some of the reporters and signed some of the pay-rolls. His particular functions were to see to the making of the paper over night. Such duties are not defined in the by-laws of the board of trustees or in writing. The powers and duties of the said Lord for the purpose of procuring news and information for publication in said newspaper were to make arrangements throughout the United States with local agents for furnishing and transmitting news. He also had the power to buy items of news from any source; and he had some latitude in hiring reporters, but such action was subject to confirmation by the editor-in-chief. The said managing editor Chester S. Lord had no power or authority to make contracts involving any large expenditures of money without due authorization to make such contracts by the board of trustees, and he had no power or authority to make alleged charter-parties or agreements of suretyship.

28 Sixth. To the sixth interrogatory the respondent answers: That the said Chester S. Lord received no instructions or directions from the board of trustees, and the respondent answers on information and belief that no instructions or directions were received by the said Chester S. Lord from any officer or agent of the respondent.

Seventh. To the seventh interrogatory the respondent answers: That the check for $5,000 given to Thomas Manning was dated April 2nd, 1898, and was signed William M. Laffan, manager, per L. O. Macdaniel; and the check for $10,000 given to Thomas Manning was dated May 14th, 1898, and was signed Thomas Hitchcock, secretary—William M. Laffan, manager. These checks were drawn on funds belonging to the respondent. The amounts of these checks were entered in a provisional account which has not yet been finally adjusted. In respect to the question "What was the course of business of the respondent in relation to posting entries from the stubs in said check book?" the respondent answers that the check book was not used in posting entries. The entries on the stubs of the two checks above mentioned were not posted in books of account from the check book.

Eighth. To the eighth interrogatory the respondent answers: That the yacht *Kanapaha* was put in dry dock in Tebo's dock in Brooklyn. She was repaired, painted, coaled and provisioned prior to her departure from the port of New York, and these matters were attended to by Mr. W. J. Chamberlin, a reporter of the Sun, acting

under orders received from the said Chester S. Lord. Some of the expenditures so made were paid for in cash, and others were paid for by check upon funds of the respondent signed William M. Laffan, manager, by L. O. Macdaniel, attorney.

Ninth. To the ninth interrogatory the respondent answers on information and belief: No; that the master of the yacht,
29 Captain Packard, was selected by Mr. Manning, the agent of the libellant, as the master of the yacht, and that the said master, Captain Packard, hired the officers, engineers and crew of said yacht.

Tenth. To the tenth interrogatory the respondent answers: That H. M. Anderson, John R. Spears and W. J. Chamberlin were the names of the reporters employed by the respondent on board the said yacht, intermittently, from April 2nd to September 5th, 1898, and their duties were to transmit news.

Eleventh. To the eleventh interrogatory the respondent answers: That there were reporters or representatives of newspapers other than the New York Sun on board of said yacht during a part of the time between April 2nd, 1898, and September, 1898, to wit, a reporter or representative of Scripps-McRae's League, St. Louis Globe Democrat, New York Press, and Harper's Weekly. The transportation of such reporters or representatives of other newspapers was arranged for by the said Chester S. Lord. Payments were made to the respondent by such other newspapers or publications for said transportation and privileges, and such payments were made by check to the order of the Sun, and the negotiations leading up to such payments were, in the main, made by said Chester S. Lord, but one arrangement was made by Mr. John R. Spears and another arrangement was made by Mr. William M. Laffan. The amount of such payments did go to the credit of the respondent in bank.

Twelfth. To the twelfth interrogatory the respondent answers: That certain items of information or news were furnished by the respondent to the Laffan bureau, and were sold by the Laffan bureau to other newspapers, and payment therefor was made to the Laffan bureau. No officers of the respondent had to do with any of said negotiations or the payment therefor, but Mr. William M. Laffan, the manager of the Sun, conducted some of said negotiations. Some of the payments were made by check, and some of the checks were made payable to the Laffan bureau and some to
30 the Sun, and some payments were made in cash and the amount thereof went to the credit of the Sun.

Thirteenth. To the thirteenth interrogatory the respondent answers on information and belief that said yacht was insured by said Chester S. Lord in April, 1898, but it denies any knowledge or information sufficient to form a belief as to the name in which the said insurance was taken out; and it avers and alleges that any policy of insurance so taken out has never been seen or examined by any officer of the respondent or its board of trustees. The respondent denies any knowledge or information sufficient to form a belief as to the amount of such insurance, but it admits that it re-

ceived a bill for insurance of $60,000 for the term of two months and that the alleged premiums thereon were paid for by the funds of the respondent and by the cashier of the respondent upon the order of the said Chester S. Lord; that the date of the payment of the first premium was May 31st, 1898, the date of the payment of the second premium was July 12th, 1898, and the date of the payment of the third premium was July 12th, 1898, and that the checks given in payment of the said premiums were signed respectively William M. Laffan, manager, per L. O. Macdaniel.

Fourteenth. To the fourteenth interrogatory the respondent answers that the said Chester S. Lord did not make any report to the board of trustees of the respondent in relation to the chartering of the yacht *Kanapaha* or in relation to the sending of reporters or other employees of the respondent to obtain news or information for publication in said newspaper relative to the condition of affairs in the vicinity of the island of Cuba; and it denies on information and belief that he made any report to any officer, director, or agent of the respondent in relation thereto. It was not the duty of the said Lord to make returns or reports from time to time to any officer, director, or agent of the respondent as to checks drawn or issued by him because the said Lord did not draw or issue checks, and it was not a part of the duty of the said Lord to make returns or reports from time to time to any officer, director, or agent of
31 the respondent as to moneys expended by him in behalf of the respondent. The duty of the said Lord was to submit weekly a statement in writing as to the number and amount of checks which were to be drawn in favor of certain reporters or collectors of news. To the other questions in the fourteenth interrogatory of the libel contained the respondent answers: No.

Fifteenth. To the first two questions in the fifteenth interrogatory contained the respondent answers: No. To the remaining questions in said fifteenth interrogatory contained the respondent answers that it has no treasurer and no other financial officer has made any such report to any such committee or to the board of trustees.

Sixteenth. To the sixteenth interrogatory the respondent answers that it has no board of directors and that the items of expenditure mentioned in the fourteenth interrogatory have not been submitted to the board of trustees or to any committee appointed by such board or by the stockholders or to any officer of the respondent.

Seventeenth. To the seventeenth interrogatory the respondent answers on information and belief that for a part of the time between April 1st, 1898, and September 5th, 1898, there was an employee of the respondent named John R. Spears on board said yacht, who was instructed by the said Chester S. Lord to make limited expenditures of money in payment for provisions, coal, supplies, wages and running expenses, and that for another portion of said time there was an employee of the respondent named H. M. Anderson on board said yacht, who was instructed by the said Chester S. Lord to make limited expenditures of money as aforesaid, and that for the balance of said time there was an employee of the respondent named W. J. Chamberlin on board said yacht, who was in-

structed by the said Chester S. Lord to make limited expenditures of money as aforesaid, and that the said employees received such instructions to make such expenditures from the said Chester
32 S. Lord alone. Part of said moneys were put to the credit of John R. Spears by the *the* Sun, upon instructions from Chester S. Lord, at Key West, Florida, part of said moneys was delivered in cash to said Spears and said Chamberlin and said Anderson, by instructions of Chester S. Lord, and part of said moneys were transmitted by cable to the said Spears or to the said Chamberlin or to the said Anderson, at various West Indian ports, by instructions of said Chester S. Lord, and part were paid by drafts drawn by said Spears and said Chamberlin and others upon the Sun. The said reporters of the Sun made no formal report in regard to such expenditures, and no action was taken in regard to such payments or expenditures by any officer or committee or by the board of trustees of the respondent.

THOMAS HITCHCOCK.

Sworn to before me this 28th day of December, 1898.

A. H. BRADLEY,
Notary Public, N. Y. Co.

FRANKLIN BARTLETT,
Proctor for the Respondent.

(Endorsed:) Answer and answer to interrogatories. Filed Dec. 29, 1898.

33 At a stated term of the United States district court, for the southern district of New York, held at the United States post-office building, in the borough of Manhattan, city of New York, on the 14th day of March, 1899.

Present: Hon. Addison Brown, district judge.

WILLIAM L. MOORE
against
SUN PRINTING AND PUBLISHING ASSOCIATION.

The libellant herein having moved for leave to amend his libel, now on the pleadings herein, and the affidavit of J. Archibald Murray, verified March 13th, 1899, and the order to show cause herein dated March 13th, 1899, after hearing J. Archibald Murray, Esq., of counsel for libellant, in support of said motion, and Franklin Bartlett, of counsel for respondent, in opposition thereto.

It is ordered that said motion be and the same hereby is granted without costs, and that said libel be and the same hereby is amended by inserting after the twelfth article a new article, to be numbered the thirteenth article, and by changing the number of the thirteenth article in the original libel to the "fourteenth" article, so that said two articles shall read as follows:

"Thirteenth. That said respondent, its agents and servants, were negligent in the care and management of said yacht after the delivery thereof to said respondent, its agents and servants, while said

yacht was bound on a voyage from Cape Haytian to the port of Havana through the old Bahama channel, and that the wrecking and loss of said yacht were due to the negligence of said
34 respondent, its agents, and servants and those managing said yacht while on the voyage aforesaid, in proceeding at too high a rate of speed, in not having a sufficient outlook, in going upon an improper and dangerous course, in not making due allowance for the influence of the tides and currents, in running said yacht upon a well-known reef located off Canado point upon the northerly shore of the island of Cuba, whereby said yacht was stranded and wrecked as aforesaid; and in not so heeding the location of the land as would have indicated before said stranding the dangerous position of said yacht and would have enabled those in charge of her to avoid said stranding and loss.

Fourteenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable court," and—

It is further ordered that the interrogatories annexed to the original libel and respondent's answers thereto stand as the interrogatories to the amended libel and answers to the same.

ADDISON BROWN.

(Endorsed:) Order. Filed March 21, 1899.

35 United States District Court, Southern District of New York.

WILLIAM L. MOORE
vs.
THE SUN PRINTING AND PUBLISHING ASSOCIATION.
} Before Hon. Addison Brown, Judge.

NEW YORK, *April* 14, 1899.

Appearances.

Zabriskie, Burrill & Murray, Esqs. (Mr. Murray), for the libellant; Charles E. Hughes, Esq., of counsel.

Franklin Bartlett, Esq., for respondent.

The claims of the libel and answer are stated.

Mr. HUGHES: We offer in evidence the articles of association of the Evening Telegraph Association filed September 30, 1867, under the laws of the State of New York at the office of the secretary of state.

They are marked Libellant's Exhibit 1.

Mr. HUGHES: We offer in evidence a certified copy of the act of the legislature of the State of New York passed January 24, 1868, changing the name of the Evening Telegraph Association to the Sun Printing and Publishing Association.

It is marked Libellant's Exhibit 2.

Mr. HUGHES: We also offer in evidence the bill of sale of the steam yacht *Kanapaha* from J. Pierrepont Morgan to William L.

Moore, dated October 21, 1891. Acknowledged the same day.

36 Mr. BARTLETT: We admit that at all times set forth in the libel Mr. Moore was owner of the yacht.

Mr. HUGHES: Have you the charter-party of April, 1898, Mr. Bartlett?

The original charter-party is produced by respondent.

Mr. HUGHES: Will the respondent admit that the signatures upon the instrument produced were written by the respective parties, by Thomas Manning and Chester S. Lord?

Mr. BARTLETT: No, we do not admit it.

WILLIAM L. MOORE, being duly sworn and examined as a witness on his own behalf, testifies:

By Mr. HUGHES:

Q. Are you the libellant?
A. Yes, sir.
Q. You reside in New York?
A. Yes, sir.
Q. Do you know Thomas Manning?
A. Yes, sir; very well.
Q. I show you this paper which has been produced and ask you whether that is the handwriting of Thomas Manning?
A. Yes, sir.

Mr. BARTLETT: I object.

Q. Have you seen Mr. Manning write?
A. Yes, sir.
Q. Familiar with his handwriting?
A. Very familiar.
Q. Now look at the signature and tell me whether that is the handwriting of Thomas Manning, the words "Thomas Manning, agent for William L. Moore, owner"?

Mr. BARTLETT: I object.

Preliminary cross by counsel for respondent.

By Mr. BARTLETT:

Q. How many times have you seen him write?
A. Oh, numbers of times; I couldn't tell you how many.

37 Q. You have seen him write often?
A. Oh, yes; very frequently. I have received bills from him, receipts from him. I have seen him write.

By Mr. HUGHES:

Q. In whose handwriting is that?
A. That is Manning's handwriting.
Q. "Thomas Manning, agent for William L. Moore, owner"?
A. He was authorized by me to sign it.

Mr. BARTLETT: I move to strike out the answer as not responsive. Motion denied.

Q. Those words are in Mr. Manning's handwriting, "Thomas Manning, agent for William L. Moore, owner"?
A. Yes.

The charter-party of April, 1898, is marked Libellant's Exhibit 3 for identification.

Counsel for libellant calls for charter-party dated May 14, 1898, and it is produced by respondent.

Q. I show you the paper which has just been produced and ask you whether the words "Thomas Manning, agent for William L. Moore," the superscription to that paper, are in the handwriting of Mr. Thomas Manning.
A. Yes, sir.
Q. Your agent?
A. My agent.
Q. Authorized to sign?
A. Authorized by me to sign that paper.
Q. For you?
A. For me.

The charter-party of May 14, 1898, is marked Libellant's Exhibit 4 for identification.

Mr. HUGHES: I ask for the production of the two agreements of suretyship, dated respectively April 1, 1898, and May 14, 1898.

Respondent's counsel produces the second one called and says he has not the first.

38 Mr. HUGHES: The one dated May 14, 1898, I ask to have marked for identification.

The COURT: Are the signatures to this admitted?

Mr. BARTLETT: No; I don't admit anything.

The agreement of suretyship of May 14, 1898, is marked Libellant's Exhibit 5 for identification.

Mr. BARTLETT: We admit the words "Chester S. Lord" in Exhibit 5 for identification.

Mr. HUGHES: Won't you admit that the additions in ink, "For Sun Printing and Publishing Associ-tion," are also in the handwriting of Chester S. Lord?

Mr. BARTLETT: No; I don't admit it, and I don't think they are. They don't look like the same handwriting to me.

Mr. HUGHES: I offer in evidence the deposition of Olaf Petersen, taken on behalf of libellant in pursuance of the order of the court, dated March 14, 1899. He was ship-keeper on the yacht at the time of her delivery.

The deposition is received subject to all objections to the questions as noted.

United States District Court, Southern District of New York.

WILLIAM L. MOORE
vs.
THE "SUN" PRINTING & PUBLISHING Association.
} Before Thomas Alexander, Esq., Commissioner.

NEW YORK, *March 14th*, 1899.

Appearances.

Messrs. Charles E. Hughes and J. Archibald Murray, for the libellant.

Mr. Franklin Bartlett, for the respondent.

Depositions Taken on Behalf of the Libellant, in Pursuance of an Order of the Court Dated March 14th, 1899.

OLAF PETERSEN, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Examined by Mr. HUGHES:

Q. What is your full name?
A. Olaf Petersen.

Mr. BARTLETT: I want the other witness excluded.
Mr. HUGHES: We have no objection.

Q. Petersen, what is your occupation; what do you do?
A. I am a seaman, sir.
Q. What was your occupation in April, 1898?
A. Seaman, sir; ship-keeper on W. L. Moore's yacht.
40 Q. What was the name of that yacht?
A. *Kanapaha.*
Q. How long had you been ship-keeper on that yacht?
A. Well, anywhere from 1895 to 1898, when she left.
Q. That is, until April, 1898; from 1895 until April, 1898?
A. Yes, sir.
Q. Where was the yacht on the 1st of April, 1898?
A. She was on Manning's dock, 26th street, Brooklyn.
Q. Manning's basin, isn't it?
A. Well, a dock or basin, whatever they call it.
Q. How long had the *Kanapaha* been at Manning's basin before that?

Objected to as immaterial and irrelevant.

A. Well, she used to lie up there every winter.
Q. Did she lay up there in the winter of 1897–1898?
A. Yes, sir.
Q. Had you been keeper during that time?
A. Yes, sir.
Q. Was the yacht in commission during that time?

Objected to as irrelevant and immaterial.

A. No, sir.

Q. How long before the 1st of April, 1898, was it that the *Kanapaha* had been in commission?

Objected to as irrelevant and immaterial.

A. Since 1895, I believe.

Q. Was there any one else on the yacht besides yourself in March, 1898?

A. Just the engineer, Mr. Lewis.

Q. Any one else?

A. No, sir.

Q. And I understand that you had charge of her for Mr. Moore?

A. Well, looking after her, that is all.

Mr. BARTLETT: He hadn't said that yet.

Q. Do you remember delivering the yacht *Kanapaha* to any one on or about the 1st of April, 1898?

A. Well, I received a letter from the agent, Manning.

41 Mr. BARTLETT: Objected to, the contents of the letter, unless it is produced.

Q. All I want to know is whether, on or about April 1st, you delivered the yacht to any one?

Mr. BARTLETT: Objected to as incompetent and improper, and calling for a conclusion. Ask him what he did.

A. To Captain Packard and his men.

Q. Well, what did you do on that day?

A. That day—that was in the afternoon, and we took her over to Tebo's dock.

Q. I mean at the time of the delivery of the yacht what did you do?

A. What did I do?

Q. Did you meet any one? Did you know Captain Packard?

A. I did not, sir.

Q. Did you know Captain Packard before the 1st of April, 1898?

A. No, sir.

Q. Had you ever met him?

A. No, sir.

Q. When did you first meet him?

A. When he came on the yacht.

Q. When was that?

A. The 1st of April.

Q. 1898?

A. 1898.

Q. You mean the yacht *Kanapaha*?

A. Yes, sir.

Q. And where was the yacht at that time?

A. Manning's dock.

Q. Where did you meet Captain Packard on that day?

A. On board the yacht *Kanapaha*.
Q. What did he say to you?

Objected to as irrelevant, immaterial, incompetent and improper.

A. Well, I asked him if he was the captain of the boat, and he says yes.
Q. Did he have a letter?
A. Yes, sir.
Q. Did he show you the letter?
A. Yes, sir; he gave me a letter.
Q. Have you got that letter here?
A. Yes, sir.
42 Q. Will you please produce it?
A. Yes, sir. (Witness produces letter.)
Q. Is that the letter that you now produce?
A. That is the letter I received from Captain Packard.
Q. And when did you receive it?
A. In the evening when he came on board.
Q. That is on April 1st, 1898?
A. Yes, sir.

Letter offered in evidence.

Mr. BARTLETT: Objected to as incompetent, irrelevant and immaterial, on the ground that the signature has not been proven, and on the special ground that we cannot be bound by any letter alleged to have been written by the plaintiff Moore, or his alleged agent, Manning.

Letter marked Exhibit "1," of March 14th, 1899.

Q. Did you receive any other letter or telegram that day?
A. Yes, sir.
Q. What did you receive?
A. A telegram.
Q. Have you got that telegram?
A. Yes, sir.
Q. Will you please produce it?
A. Yes, sir. (Witness produces telegram.)
Q. Is this the telegram that you received that you now hand me?
A. Yes, sir; the telegram I received from the owner of the yacht. It is his name to it, anyway.

Mr. BARTLETT: I move to strike out the voluntary statement of the witness that he received it from the owner, and that the owner's name was on it, as irresponsive, incompetent, irrelevant and immaterial.

Q. On what day did you receive this telegram?
A. The 1st of April, 1898, in the evening.
Q. In the evening, April 1st, 1898?
A. Yes, sir; I couldn't tell what hour.

Telegram offered in evidence.

43 Mr. BARTLETT: Objected to as incompetent, improper, irrelevant and immaterial, as not duly proven, not the best evidence of the telegram, not being the dispatch alleged to have been sent or the original.

Telegram marked Exhibit "2," of March 14th, 1899.

Q. Which did you receive first, this telegram which has been marked Exhibit "2" of this date, or the letter which has been marked Exhibit "1"?

A. The letter.

Q. From Captain Packard?

A. Yes, sir.

Q. And then later you got the telegram?

A. Yes, sir.

Q. How long after?

A. I couldn't tell; can't recollect it.

Q. What time in the afternoon was it that Captain Packard came to the yacht *Kanapaha* on April 1st, 1898?

A. The hour I couldn't tell, but it was late in the afternoon.

Q. Well, when you say late, how late do you mean?

A. After four o'clock, anyhow.

Q. What time was it, as nearly as you can remember, that you received the telegram?

A. Well, I couldn't tell for sure.

Q. Well, your best memory.

A. Well, that isn't well to say, my best memory.

Q. Did any one come to the yacht on that day with Captain Packard?

A. Yes, sir; he had two with him.

Q. Do you remember the name of either of those men?

A. I didn't know the name, but I heard the name later on.

Q. Well, you met one of them some time after frequently?

A. Well, he came on the yacht.

Q. What was his name?

A. Anderson.

Q. Well, after Captain Packard handed you this letter which has been marked Exhibit "1"—have you got the envelope that that letter came in?

A. No, sir.

Q. Have you got the envelope that this telegram came in?

A. I have sir. (Witness produces envelope.)

Envelope offered in evidence.

44 Mr. BARTLETT: Objected to as incompetent, and as not being the best evidence.

Envelope marked Exhibit "3," of March 14th, 1899.

Q. After Packard handed you this letter which has been marked Exhibit "1" what did you do; what did he say to you, and what did you say to him?

A. I can't recollect all that. He said he was the captain.

Q. Did he ask for the yacht?

Mr. BARTLETT: I object to your leading the witness.

Q. Did he say anything about the yacht?

A. He said he had hired the yacht. He said he was the captain——

Mr. BARTLETT: Objected to as incompetent, improper and irrelevant.

The WITNESS (continuing): He said he was the captain, and then I asked him if I could have a situation with him, and he said yes.

Q. Do you remember whether you said anything to him about letting him have the yacht?

A. I didn't say nothing to him; he said to the other——

Mr. BARTLETT: Well, don't answer that.

Q. Did you say anything to Captain Packard about letting him have the yacht?

A. He sent his men down to take the yacht, and I told him he couldn't have the yacht before I had an order from the owner.

Mr. BARTLETT: I move to strike out this testimony as irresponsive, incompetent and irrelevant.

Q. To whom did he say that?

A. To Captain Packard's men.

Q. Do you remember who they were?

A. I don't know all their names.

Q. Was that the time when Packard came down himself?

A. He came down soon after.

Q. Well, first men came there and asked for the yacht
45 and said they were Captain Packard's men?

A. Yes, sir.

Q. And afterwards Captain Packard came down and gave you this letter? Is that so?

A. After I didn't let the yacht go I was called up in the office on the dock on the telephone.

Q. You called up what office?

A. I was called up. By the little office on the dock there there is a telephone, and I was told by Manning's men Manning wished to see me, and he spoke to me.

Mr. BARTLETT: I object to any conversation over the telephone as incompetent, irrelevant, and immaterial.

The WITNESS (continuing): Well, he asked me if I was the man in charge of the *Kanapaha*.

Q. Who asked that?

A. The man who spoke to me on the telephone. First the man on the dock told me Manning wished to see me, he was on the telephone, and he asked me through the telephone if I was the man in charge. Of course he talked a lot. I don't recollect it; I didn't understand all of it.

Q. After you came away from the telephone what did you do?

A. I went on the yacht again.

Q. Was that before Captain Packard came there?
A. Yes, sir.
Q. Well, that was in the evening, did Captain Packard take the yacht?
A. I couldn't tell the hour; impossible.
Q. Well, was it before or after you received this telegram, Exhibit "2"?
A. Well, of course Manning told me through the telephone he was responsible, I could let the yacht go.
Q. To whom?
A. Captain Packard and his men.
Q. You remember letting Captain Packard have the yacht before, or was it after you got this telegram, Exhibit "2"?
A. The yacht was hauled out of the basin, and he was going over to Tebo's dock.
Q. And you were aboard?
A. Yes, sir.
Q. And Captain Packard was aboard?
A. He came aboard at Tebo's.
46 Q. Then the yacht was taken out of the basin with you aboard?
A. Yes, sir.
Q. And Captain Packard was not aboard?
A. No, sir; his men were.
Q. Was Mr. Anderson aboard?
A. No, sir.
Q. And where was the yacht taken?
A. To Tebo's dock.
Q. Where is Tebo's dock?
A. 23rd street.
Q. New York?
A. Brooklyn.
Q. Was that on this same evening, April 1st, 1898?
A. Yes, sir.
Q. When did Captain Packard get on the yacht?
A. At Tebo's.
Q. How late was that in the evening?
A. I know it was dark.
Q. You say you asked Captain Packard if you could have a situation?
A. Yes, sir.
Q. When did you ask him that?
A. When he came aboard.
Q. At Tebo's dock?
A. Yes, sir.
Q. What kind of a situation did he give you?
A. Seaman.
Q. Deck hand on the yacht?
A. Yes, sir.
Q. How long after that did you remain on the yacht?

Mr. BARTLETT: Don't you know without looking at that book? (Witness having referred to memorandum.)

A. The 12th of June.

Q. Well, you remained on the yacht that night of April 1st?

A. Yes, sir.

Q. And you were on the yacht the next day?

A. Well, I asked the captain for liberty for a couple of hours.

Q. What captain, Captain Packard?

A. Captain Packard.

Q. That was on April 2nd?

A. Yes, sir.

Q. Did he give it to you?

A. Yes, sir.

Q. And you were away from the yacht for how long?

A. Two and a half hours, I guess.

47 Q. With that exception you were on the yacht right along?

A. Yes, sir; after that.

Q. And were you on the yacht on the night of April 2nd?

A. Yes, sir.

Q. And also on the next day, April 3rd?

A. I believe we left the dock for sea that day.

Q. You were on the boat when it left; you went away with her?

A. Yes, sir.

Q. When was the yacht put into commission; when was the yacht made ready to go away?

A. She was ready by the 2nd, he told me.

Q. Do you remember whether she left in the night or day time?

A. Night.

Q. Wasn't it the night after the night when you first met Captain Packard, the night after?

A. I can't remember.

Q. How many men were on the yacht when she went away?

A. All that I can't recollect.

Q. Was there a captain?

A. Yes, sir.

Q. Who was he?

A. Captain Packard.

Q. A first mate?

A. Yes, sir.

Q. What was his name?

A. Seamans.

Q. Were there deck hands?

A. Yes, sir.

Q. How many?

A. Four.

Q. And you were one of the four?

A. I was one of the four.

Q. And was anybody else on the yacht besides the captain and the mate and the deck hands when she went away?

A. The engine-room department.

Q. And who were in that?

A. The engineer and his men.
Q. Who was the engineer?
A. Davis.
Q. And how many men did he have?
A. Never counted them, sir.
Q. *One or two?*
A. More than that.
Q. About how many?
A. I don't say, because I never counted.
Q. Was there anybody else on board besides the crew?
A. One, sir.
48 Q. Who was he?
A. Mr. Anderson.
Q. The same man who came down with Captain Packard?
A. Yes, sir.
Q. On the evening of the 1st?
A. Yes, sir.
Q. Give me your best memory how long after that evening of April 1st it was that the yacht *Kanapaha* left?
A. That is no use saying.
Q. Was it within a day or two?
A. Two, I believe. I believe she left between the night of the 2nd and the 3rd.
Q. Between the 2nd and 3rd of April, 1898. You know it was less than three or four days, don't you. You know that the yacht did not leave more than two days after the first of April?
A. Well, about two; I couldn't tell for sure.
Q. Were any of these men that were on the yacht when she left, whom you have mentioned, on the yacht before April 1st, 1898, except yourself?
A. No, sir.
Q. And who got the yacht ready to go away?
A. Captain Packard.
Q. That was the day after the day you let him have the boat?
A. Yes, sir.
Q. Was Mr. Anderson on the yacht the night she lay at Tebo's dock?
A. I couldn't tell for sure.
Q. How long did he stay on the yacht after he went aboard of her at Manning's dock?
A. That night?
Q. Yes.
A. Well, now, I was working and I didn't look at everything.
Q. Well, he was there that night for some time?
A. Yes, sir.
Q. Was he there the next day?
A. Well, then I was around working.
Q. Well, you saw him there from time to time the next day, didn't you?
A. I couldn't tell.

Q. You remember provisions being brought to the yacht?
A. Yes, sir.
Q. And coal?
A. Yes, sir.
Q. When was that done?
A. Took the coal in the night we left from the dock.
49 Q. And did you take provisions in that day?
A. Yes; the provisions was brought down the dock.
Q. When did they commence to put provisions on the yacht?
A. I can't recollect that.
Q. Was it the next morning?
A. We had to get the boat in readiness first.
Q. You remember it was done the next morning, don't you, after you left Manning's basin?
A. It was done some time.
Q. Some time the next morning, wasn't it?

Mr. BARTLETT: I object to this form of examination, leading the witness.

Q. Wasn't it some time the next day after you left Manning's basin?
A. I believe it was, sir.
Q. And you commenced in the morning, didn't you?
A. We commenced on the yacht; getting her ready.
Q. Was the yacht in dry dock?
A. Yes, sir.
Q. When was she got into dry dock?
A. The morning after.
Q. The morning after you left Manning's basin?
A. Yes, sir.
Q. And how long was she in dry dock?
A. Well, just before dinner or after dinner, I can't tell.
Q. Of the same day?
A. Yes, sir.
Q. After she came out of dry dock what was done?
A. Making her fast to the dock, of course.
Q. And then did they put provisions aboard her?
A. The coal went on board; everything had to come up; everything came on board.
Q. And who attended to that?
A. The mate, he was around.
Q. That was Seamans?
A. Yes, sir, he was Seamans.
Q. Had he ever been on the yacht before?
A. Not that I know of.
Q. Anybody else attending to it, to putting stuff on the yacht to make her ready?
A. The men, of course, four seamen.
50 Q. Was Captain Packard there?
A. Came around once in a while, sir.
Q. Did you see Mr. Anderson from time to time?

A. No, sir, I can't recollect seeing him.
Q. I think you have said that Mr. Anderson went away with you when you started on the voyage?
A. Certainly he went away with us.
Q. Where did you go to first?
A. I hears talk that we were bound to Charleston.

Mr. BARTLETT: Objected to as incompetent, irrelevant and immaterial.

Q. Where did you put in first?
A. Cape Lookout.
Q. When did you get to Cape Lookout, about how long after you left New York?
A. I couldn't tell.
Q. Where did you go from there?
A. We went somewhere around there for coal; I don't know the place.
Q. And where did you go from there?
A. Charleston.
Q. From there?
A. Key West; all over; I believe we reached Key West that time.
Q. Had anybody else come on board her before you got to Key West?
A. Not that I know of.
Q. Did anybody come on board the boat at Key West?
A. I seen three more there.
Q. Do you know the names of any of them?
A. Yes, sir, one.
Q. What is his name?
A. Speers.
Q. How long did Mr. Speers stay on board the yacht after he came on board at Key West?
A. He stayed there for some time.
Q. Well, for how long about?
A. That is hard for me to tell.
Q. Several weeks?
A. Oh, yes, several weeks.
Q. What was his first name; what did you call him?
A. Mr. Speers.
51 Q. Do you remember his first name?
A. I do not, sir.
Q. How was he known on the boat?
A. He went by the name of commodore.
Q. Where did you go from Key West?

Mr. BARTLETT: I move to strike that out.

A. Went out to the fleet.
Q. Do you remember the *Buena Ventura?*
A. Yes, sir.
Q. Was that a vessel?

A. A steamer.
Q. When did you see that steamer?
A. We saw her coming in against the fleet.
Q. Did you see her captured; was the yacht there when she was captured?
A. Yes, sir; she was along with the fleet.
Q. Do you remember where the yacht went after the capture of the *Buena Ventura?*
A. Back to Key West.
Q. Where did you go then after leaving Key West?
A. Back after the fleet again.
Q. Do you remember the blockade of Havana?
A. I do, sir.
Q. Was the yacht at that place?
A. She was around the ships there.
Q. Do you remember whether she went to Havana the first day of the blockade?
A. I do not, sir.
Q. You remember she was going with the fleet?
A. She was going around the coast of Cuba.
Q. Do you remember the *Mayflower?*
A. I do, sir.
Q. What was the *Mayflower?*
A. A cruiser.
Q. You remember falling in with the *Mayflower*, do you?
A. I seen her.
Q. You were on the yacht all the time, weren't you; you did not leave the yacht?
A. No, sir; not until the 12th of June.
Q. Well, you say you were around the coast of Cuba. Do you remember going to Cape Haitien?
A. I do, sir; I remember the day.
52 Q. Do you remember what you did there?
A. Coaled up.
Q. Do you remember where you went after leaving there?
A. After the fleet again.
Q. When you say the fleet, what do you mean, the United States fleet?
A. Certainly.
Q. The warships?
A. Yes, sir.
Q. Were you off Santiago?
A. Once I recollect we were there when I was on her.
Q. What other places do you remember touching at?
A. St. Thomas.
Q. Any other place?
A. Kingston.
Q. Kingston, Jamaica?
A. Yes, sir.
Q. And you remember how long it was before you left the yacht

when she touched at Kingston did you go; you left the yacht on the 12th of June, 1898?

A. Yes, sir.

Q. How many days before that about did the yacht go to Kingston?

A. It wasn't many days.

Q. During all this time that you were on the yacht, beginning with the 1st of April to the 12th of June, was Mr. Anderson on board?

A. From the 1st of April to the 12th of June.

Q. Was Mr. Anderson on board all the while?

A. All the while, as far as I know.

Q. You saw him on board a good deal of the while, didn't you?

A. Yes, sir.

Q. Met him every day, didn't you?

A. Well, he might have been out.

Q. And Mr. Speers came on at Key West?

A. I believe he did.

Q. And did he remain on the yacht until you left on the 12th of June?

A. No, sir.

Q. How long did he stay on board?

A. I can't tell the date; he left, but I didn't stay long after him.

Q. Do I understand you to mean that he left a few days before you did?

A. Yes, sir.

Q. But not very long before?

A. Yes, sir.

53 Q. When the yacht was cruising about with the fleet did you put into Key West from time to time?

A. Yes, sir.

Q. What was done at Key West, did you tie up at a dock, or was a boat sent ashore?

A. We put in for coal.

Q. Did you ever see Mr. Anderson go ashore with papers?

A. I don't know what he had in his pocket.

Q. Do you remember after the *Buena Ventura* was captured you were going back to Key West?

A. Yes, sir.

Q. Did Mr. Anderson go off the boat at that time?

A. Yes, sir.

Q. How?

A. In a rowboat.

Q. Who rowed the boat?

A. I did.

Q. What did he say to you?

A. He didn't say anything; told me to take the first landing, and I put him alongside a dock.

Q. And he came back after a little while?

A. Yes, sir.

Q. And you took him back to the yacht?

A. Yes, sir.
Q. Did you see Mr. Spears once in a while leave the boat?
A. Yes, sir; he would go aboard the warships.
Q. Do you remember being hailed by any of the ships of the fleet?
A. Can't remember that.
Q. You remember some time being called to by some cruiser or ship?
A. No, sir; I am not sure; I would not say I recollect it.
Q. What was the speed of the yacht?
A. Well, I was told only from the mate of Captain Seamans; I don't know it; I never kept the navigation of the boat.
Q. Did you hear Mr. Seamans say anything about it?

Mr. BARTLETT: Objected to as incompetent, immaterial, irrelevant and improper.

A. Well, he told me that the best was thirteen.
Q. Thirteen knots?
A. Yes, sir.
Q. How long did Captain Packard remain on the boat, the yacht *Kanapaha?*
A. Can't tell for sure.
Q. You remember that he left before you did?
A. Yes, sir.
54 Q. Who took command of the yacht when Captain Packard left?
A. Seamans.
Q. And did he remain in command—how long did he remain in command?
A. He was in command when I left.
Q. Do you recognize any man in the room here as men who were on the yacht?
A. I couldn't tell for sure, and I won't say nothing.
Q. Do you see any one here that according to your best memory you saw on the yacht?
A. Wouldn't say for sure; it is hard to tell.
Q. Do you think so?
A. Well, thinking is no use.
Q. When I say think, I mean what your best recollection is, your best memory is?
A. Well, I told you there is no use.
Q. Well, this gentleman who sits next to Mr. Bartlett, do you remember ever seeing him before?
A. I couldn't tell for sure.
Q. Do you remember hearing Mr. Speers saying anything to the captain in regard to the handling of the boat?
A. Handling?
Q. Well, sails, and what should be done?
A. Not but very little.
Q. Well, what did you hear?

A. Well, it was only one day he talked about getting more sail for the boat.

Q. Who do you mean, Mr. Speers?

A. Yes, sir.

Q. And to whom did he say this?

A. Either the captain or mate.

Q. What did he say?

A. That he should have another sail on between the two masts. Whether it was done I don't know.

Cross-examination by Mr. BARTLETT:

Q. Are you going to leave this port?

A. I got to leave as soon as I am through here.

Q. On what vessel are you going?

A. I couldn't tell.

Q. Have you been engaged to leave New York?

A. No, sir.

Q. Have you any engagement now to leave this port?

A. No, sir.

55 Mr. BARTLETT: I shall ask the court to take notice of this.

By Mr. HUGHES:

Q. You intended to leave New York today if you could?

A. If I could get the situation.

By Mr. BARTLETT:

Q. Have you any engagement now to leave the port of New York?

A. No, sir, but I expected to.

Q. Did you have any engagement yesterday or today to leave the port of New York today?

A. No, sir.

By Mr. HUGHES:

Q. Didn't you expect to leave today?

A. Well, in one way. I should be down to see the captain of the boat. He said he wasn't going to leave the port yet.

Q. You told Mr. Murray that you were going away on the 15th?

A. Yes, sir; then he said he was going to leave.

Q. Who?

A. The fishing-boat.

Q. That you intended to go on?

A. Yes, sir.

Q. And you intend to go down now, as soon as you are through here, and look after it?

A. Yes, sir.

Q. And you do not intend to stay in New York any longer?

A. No, sir.

By Mr. BARTLETT:

Q. But in point of fact have you any engagement to leave on any ship, or on any boat, or any fishing-boat now?
A. Engagement? I don't know what it means.
Q. Well, have you been hired to go on any boat?
A. No, sir.
Q. Had you been hired yesterday to go on any boat?
A. I was told to come back again.
Q. By whom?
A. The captain of the smack.
Q. What smack?
A. The *Mascot*. He told me to come back last Saturday.
Q. Where was his boat then?
A. Tebo's dock,
Q. Did you go back?
A. I went back Saturday, but didn't meet him.
56 Q. Then yesterday you had not been hired by any one?
A. No; yesterday I didn't meet him.
Q. Well, up to the present no one has hired you?
A. No, sir.

By Mr. HUGHES:

Q. You are now looking for a place on a boat, are you not, to leave this port?
A. Yes, sir.
Q. And you are going just as soon as you can?
A. Yes, sir.
Q. And except for the signing of this deposition you would go this afternoon?
A. Yes, sir.

By Mr. BARTLETT:

Q. But you don't know of any place you can get?
A. I don't know for sure.
Q. The place you are looking for is as able seaman?
A. Yes, sir.
Q. How did you come to testify here today?
A. This gentleman here asked me.
Q. How did you know Mr. Murray?
A. I received a letter from Mr. Moore.
Q. Mr. Moore wrote you?
A. Yes, sir.
Q. To come to Mr. Moore's office?
A. Yes, sir.
Q. Where did they send this letter to?
A. To where I live.
Q. Where do you live?
A. Brooklyn.
Q. What part?
A. President street.

Q. What number?
A. 11.
Q. Mr. Moore wrote to you?
A. Yes, sir.
Q. Did he say what he wanted of you?

Mr. HUGHES: I object, unless the letter is produced; no notice to produce the letter has been given.

A. He told me to come to see him, that is all.
Q. Who?
A. Mr. Murray.
Q. Mr. Moore told you to go to see Mr. Murray?

Mr. HUGHES: Same objection.

57 The WITNESS: Well, I will show it to you. (Produces letter.)
Q. Is this the letter you received?
A. Yes, sir.

Mr. BARTLETT: I offer it in evidence.
Marked Exhibit "4" of March 14th, 1899.

By Mr. HUGHES:

Q. You were subpœnaed, were you not; you got a subpœna to come here?
A. Yes, sir.
Q. Will you produce it, please?
A. I haven't got it.
Q. You remember you got a subpœna?
A. Yes, sir; I got a subpœna.

The WITNESS: Here it is. (Produces subpœna.)
Subpœna offered in evidence, and marked Exhibit "5," of March 14th, 1899.

Q. When was that given to you?
A. Last night, sir.
Q. This letter you have produced, marked Exhibit "4," is the only letter you have received about your testimony, isn't it?
A. Yes, sir.
Q. You said you got the letter from Mr. Moore, you meant it was from Mr. Murray?
A. Yes, sir.
Q. That is the only letter?
A. Yes, sir.

EXHIBIT 1—March 15, 1899.

Manning's Yacht Agency.

NEW YORK, *April* 1, 1898.

Man in charge yacht *Kanapaha*, Manning's basin, foot 26th St., So. Brooklyn, N. Y.

DEAR SIR: Please deliver immediately to the bearer, Capt. Packard, the steam yacht *Kanapaha*, with all her equipment; the yacht is chartered, and Capt. Packard represents the hirers.

Yours very truly, THOMAS MANNING,
Agent for Wm. L. Moore, Owner.

58 EXHIBIT 2—March 15, 1899.

Blank of the Western Union Telegraph Company.

Received at 703 Third Ave., cor. 22nd St.

APRIL 1, 1898.

Dated West Phila., Pa.

To Yacht *Kanapaha*, foot 26 St., B'klyn:

Yacht chartered Manning's orders will be obeyed has full authority.

W. L. MOORE.

EXHIBIT 3—March 15, 1899.

Envelope of Western Union Telegraph Co.

703 Third Ave., cor. 22nd St.

YACHT KANAPAHA,
Foot 26th St., Brooklyn.

EXHIBIT 4—March 15.

MARCH 4TH, 1899.

Mr. Olaf Petersen, Riecken's hotel, 13 President street, Brooklyn, N. Y.

DEAR SIR: Dr. William L. Moore wishes you to call and see me at the earliest opportunity in reference to the *Kanapaha*. Please bring with you any papers you may have relating to the delivery of the yacht to the New York Sun or to your subsequent employment on the yacht.

Yours truly, J. ARCHIBALD MURRAY.

59 EXHIBIT 5—March 15, 1899.

By virtue of a writ of subpœna, to you directed and herewith shown, you are commanded and firmly enjoined, that laying all other matters aside and notwithstanding any excuse, you be and

appear in your proper person before the judge of the district court of the United States of America for the southern district of New York, at a stated term of said court, to be held at the United States court-rooms in the U. S. court and post-office building in the city of New York in and for the said southern district, on the 14th day of March, 1899, at 11 o'clock in the forenoon of the same day, to testify all and everything which you may know in a certain cause now depending undetermined in the said court, then and there to be tried between William L. Moore, libellant, and Sun Printing and Publishing Association, respondent, on the part of the libellant. And this you are not to omit under the penalty of two hundred and fifty dollars.

Dated this 6th day of March, 1899.

By the court:

SAM'L H. LYMAN, *Clerk.*

To Olaf Peterson.

LEONARD O. MACDANIEL, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. Where do you reside?

A. Boonton, New Jersey.

Q. What is your occupation?

A. I am clerk in the employ of the Sun.

Q. The Sun Printing and Publishing Association, the respondent in this action?

A. Yes, sir.

Q. How long have you been so employed?

A. Nine years and odd.

60 Q. In what department of the Sun are you employed?

A. In the cashier's department particularly.

Q. How long have you been employed in the cashier's department?

A. Nine years, since I have been there.

Q. Who is the cashier?

A. I am.

Q. How long have you been cashier?

A. Nine years and some months.

Q. Do you draw checks upon the funds of the Sun, or sign checks drawn upon the funds of the Sun?

A. I make out some checks and I have power of attorney on special account.

Q. Do you from time to time sign checks drawn on the accounts of the Sun?

A. No; literally no.

Q. Don't you ever?

A. Not on account of the Sun strictly speaking.

Q. On the funds of the Sun in bank to the credit of the Sun?

A. I draw upon the account called manager account; I have power of attorney from W. M. Laffan, manager.

Q. Is he business manager of the Sun?
A. His title is general manager.
Q. How long has he been such?
A. Prior to me.

By the COURT:

Q. The fund you draw upon is known as the manager's fund?
A. Manager account.

By Mr. HUGHES:

Q. Do I understand that there is a bank account kept by the Sun in the name of William M. Laffan, manager?
A. Yes.
Q. And that you from time to time sign checks drawn upon that account?
A. Yes, sir.
Q. Do you from time to time endorse checks for deposit to that account or are funds transferred to that account by the Sun?
A. Both.
Q. I would like to have produced the check dated on or about April 1st, 1898, for $5,000 to the order of Thomas Manning, signed "Wm. M. Laffan, manager, per L. O. Macdaniel." Have you such a check here?
A. I believe so.
61 Q. And you also have a check for $10,000, dated on or about May 14, 1898, signed "Thomas Hitchcock, secretary, William M. Laffan, manager, to the order of Thomas Manning"?
A. I think the event will prove it is there.
Q. Will you kindly produce it?

Mr. BARTLETT: I object to the admission of the first check.

A. (The witness produces the check.)
Q. In this check you now hand me, dated April 2, 1898, to the order of Thomas Manning for $5,000, signed "William M. Laffan, manager, by L. O. Macdaniel," that signature, "W. M. Laffan," is stamped, is it not?

Mr. BARTLETT: It is not proper to read the check until it is offered in evidence.

Q. Is this signature "W. M. Laffan," or that part of it, stamped?
A. That is stamped.
Q. And the handwriting below, "L. A. Macdaniel," is in your handwriting?
A. It is.
Q. And you drew that check on that day?

Objected to unless the check is offered in evidence.

Q. Or signed that check on that day?

Objected to unless the check is offered in evidence.

62 LIBELLANT'S EXHIBIT No. 6.

The Sun.

No. 37951. NEW YORK, *Apr.* 2, 1898.

National Broadway bank,

Pay to Thos. Manning or order five thousand 00/00 dollars.

$5,000.

W. M. LAFFAN,
Manager,
P'r L. O. MACDANIEL.

Certification on Face of Check.

National Broadway bank. Certified April 2, 1898.
Payable only through New York clearing-house.

Pay to the Corn Exchange bank, New York, or order.
THOMAS MANNING,
P'r T. ST. J.

Received payment through the New York clearing-house.
April 2, 1898.

Endorsement guaranteed.
CORN EXCHANGE BANK.
LOFTIN LOVE, *Cashier*.

63 LIBELLANT'S EXHIBIT No. 7.

The Sun.

No. 23161. $10,000. NEW YORK, *May* 14, 1898.

National Broadway bank,

Pay to the order of Thomas Manning ten thousand dollars.

W. M. LAFFAN, *Manager.*

THOMAS HITCHCOCK, *Secretary.*

Pay to the Corn Exchange bank, New York, or order.
THOMAS MANNING,
P'r T. ST. J.

Received payment through the New York clearing-house.
May 16, 1898.

Endorsement guaranteed.
CORN EXCHANGE BANK,
NEW YORK.
LOFTIN LOVE, *Cashier.*

A. I did.
Q. To whom did you deliver it?
A. Chester S. Lord.

Mr. HUGHES: I offer the check in evidence.
Objected to as incompetent, irrelevant and immaterial; and on the special ground that whatever took place under the
64 charter-party, which had expired long prior to the loss of the vessel, is irrelevant.
The COURT: I think this is practically a continuous thing. I will admit it.
Mr. BARTLETT: We except.
The check is marked Libellant's Exhibit No. 6.

Q. You have another check there for $10,000, dated May 14, 1898, have you not? The one I called for?
A. (The witness produces the check.)

Q. I show you the signature and ask you in whose handwriting it is. You have seen Mr. Laffan write?

A. I have.

Q. You are familiar with his handwriting?

A. I am.

Q. In whose handwriting is the signature before the word "manager"?

A. Apparently that of W. M. Laffan.

Q. Have you seen Mr. Hitchcock write?

A. I have.

Q. And you are familiar with his handwriting?

A. I am.

Q. In whose handwriting is the signature "Thomas Hitchcock" before the word "secretary"?

A. Evidently Thomas Hitchcock's.

Q. Secretary of the Sun?

A. Yes, sir.

Q. Mr. Laffan, manager of the Sun, is the one in whose handwriting the other signature is?

A. Yes.

Q. Did you see that check at the time it was drawn?

A. I did not.

The second check is offered in evidence.

It is marked Libellant's Exhibit No. 7.

Mr. HUGHES: Exhibit No. 6 reads as follows: On the margin transversely "The Sun." Then "No. 37951" on the left hand. On the right hand "New York, Apr. 2, 1898." Below "National Broadway bank." Below "Pay to Thos. Manning or order five thousand 00/00." Below on the left "$5,000," signed on the right "W. M. Laffan p'r L. O. Macdaniel;" the word "manager" midway between the two signatures.

65 Mr. BARTLETT: You should not say "signed" because "W. M. Laffan" is stamped and "L. O. Macdaniel" is in ink.

Mr. HUGHES: There is also stamped on the face of the check "National Broadway bank; certified April 2, 1898. Payable only through New York clearing-house."

There is endorsed on the check "Pay to the Corn Exchange bank, New York, or order. Thomas Manning p'r T. St. J." And below is stamped "Received payment through the New York clearing-house. April 2, 1898. Endorsement guaranteed. Corn Exchange bank. Loftin Love, cashier."

Exhibit No. 7 is as follows: Transversely on the margin "The Sun." Then on the left "No. 23161." "$10,000." On the right hand at the top, "New York, May 14, 1898." Below "National Broadway bank." Below "Pay to the order of Thomas Manning ten thousand dollars." On the left at the bottom, "Thomas Hitchcock," written, the word "secretary" printed. Opposite that signature is "W. M. Laffan," written, with the word "manager" printed. On the back is endorsed "Pay to the Corn Exchange bank, New York, or order. Thomas Manning p'r T. St. J." Below stamped,

"Received payment through the New York clearing-house May 16, 1898. Endorsement guaranteed. Corn Exchange bank, New York, Loftin Love, cashier."

Q. When you drew this check for $5,000, Exhibit No. 6, did you enter that amount in any account which you kept?
A. No.
Q. Did you at any time enter that check or the amount thereof in any book of account which you kept?
A. Yes.
Q. Have you such book of account here?
A. I presume I have.
Q. Will you kindly produce it?
A. (The witness produces the book.)
66 Q. What book have you produced?
A. I have a journal here, No. 8.
Q. The journal of the respondent, The Sun?
A. The journal of The Sun.
Q. Will you please turn to the folio at which there is any entry relative to the check I asked you about?
A. Folio 24.
Q. Will you please point out the entry?
A. (The witness does as requested.)
Q. Is that in your handwriting?
A. That is.
Q. When did you write that entry?
A. Probably about the middle of May, 1898.
Q. And it is under what date?
A. Under the date of the 18th of April, 1898.
Q. Did you keep this book, this journal?

By the COURT:

Q. What is the entry there?
A. "Yacht *Kanapaha*, 5,000."
Q. Is that a debit or credit entry?
A. That is a debit entry.

By Mr. HUGHES:

Q. Under what heading is that entry?
A. "Editorial expense."
Q. And all the other entries under that heading, "Editorial expense," were entered by you at or about the same time?
A. Yes.
Q. And they are entries of various disbursements in connection with the acquisition of news?
A. Yes.
Q. For the Sun?
A. For the Sun, yes.
Q. Is there any other entry on that page which refers in any way to the yacht *Kanapaha*, or any expense connected with that yacht other than this $5,000 entry that you have mentioned?

A. I see none there that I would recognize as such.
Q. Are you able to state there is none such?
A. Yes.

Mr. HUGHES: I offer in evidence the entry to which I have just referred under the title of "Editorial expense."

Objected to.

67 Mr. HUGHES: I merely want to show what relation this item has to the other items on the page.

Q. On the same page on which you have pointed out this entry of "$5,000 yacht *Kanapaha*," you find at the top of the page a heading "Editorial salaries" do you not?
A. I do.
Q. And those are salaries paid by the Sun to its employees?
A. Yes.
Q. You notice the next heading on that page is "Subscriptions"?
A. I do.
Q. Are those debits of payments by the Sun or credits for payments for subscriptions?

Objected to as irrelevant.

The COURT: Ask if the other entries on the same page all relate to the business of the Sun.

Q. Do the other entries on this page 24 of the journal produced relate to the business of the Sun?
A. They do.
Q. I notice that at the top of this page are the words "April 30, 1898." You said the entry of the $5,000 relating to the yacht *Kanapaha* was made on the 18th. Does the figure "18" above the item, about 6 lines ahead of this one in evidence that I have read mean April 18?
A. It does.

By the COURT:

Q. How came the entry there regarding this $5,000 to be April 18 when the check was certified on the 2d?
A. I used my convenience in the entry, in making the entry. I keep it on memoranda some time.
Q. Does that date mean merely the date on which you put it in the book?
A. That means the date which it shows in the cash book.

By Mr. HUGHES:

Q. Have you the cash book here?
A. I have.

68 Q. Showing the source of this entry in the journal?
A. I have.
Q. Will you please produce it?
A. I will.

By Mr. HUGHES:

Q. Is this respondent's cash book that you have now in your lap?
A. It is.
Q. And you point to folio 183?
A. I do.
Q. To an item under the heading "Editorial expense"—what?
A. "Yacht *Kanapaha*, 5,000."
Q. Whose handwriting is that in?
A. My assistant's.
Q. Employed by the respondent?
A. Yes, sir.
Q. Do all the items on this page, folio 183, relate to the business of the Sun?
A. They do.
Q. This book is the regular cash book kept by the Sun?
A. It is. The one now in use.
Q. When was that entry made?
A. April 18, 1898.
Q. Have you any other entry or memorandum of any sort which was the source of that entry in the cash book?
A. None that I am aware of.
Q. How was that kept from April 2d when the check was certified to April 18 when the entry in the cash book was made—on a memorandum slip?
A. On a memorandum slip.
Q. A loose sheet of paper?
A. Yes.
Q. Wasn't entered in any book prior to the 18th?
A. No.
Q. Do you preserve those slips?
A. I do not.
Q. Was this entry posted from your journal to your ledger?
A. It was.
Q. Will you produce the account in the ledger showing that item?
A. (The witness produces the ledger.)
Q. This book that you now produce is the ledger kept by the Sun?
A. It is.
Q. And you turn to the account on page 139?
A. I do.
Q. What is the heading of that account?
A. "Editorial expense."
Q. Are all the editorial expenses entered in that ac- *character*
69 count?
A. All those that I call editorial expenses are.
Q. What do you call editorial expenses?
Objected to as irrelevant.
Q. What class of items appear in this account?
The COURT: I don't think that is necessary.

By the COURT:

Q. It relates to the Sun newspaper, does it?
A. Yes, sir. Of course that is a matter of detail.

By Mr. HUGHES:

Q. Will you refer to the entry which contains the item of $5,000 for the yacht *Kanapaha* to which you have referred in the journal?
A. $693,359.
Q. In other words, the item $693,359, which you find at folio 139 of the ledger under the head of "Editorial expense, April 30, 1898," is the total of items of aditorial expense shown on folio 24 of the journal to which you referred under the date of April 30, 1898, the separate dates of the various items entering into that total being opposite those items on the journal folio?
A. That is so.
Q. Who kept this account in the ledger?
A. This is my handwriting; I do.
Q. Will you point to the entry of the check dated May 14? Where is the item of $10,000 of May 14, 1898, of the check for that amount, Exhibit 7? You turn to folio 38 of the journal under date of May 31, 1898, under the heading "Editorial expense," do you not?
A. Yes.
Q. And under the heading "Editorial expense" there are various items under date of May 3, May 10, May 17, May 24 and May 31, aggregating $21,655.04. Is one of those items in that aggregate this check for $10,000?
A. It appears to be.
Q. Will you please read the item?
A. "May 17, charter *Kanapaha* to October 1, $10,000."
Q. That date, May 17, is the date of the entry in the cash book?
A. It is.
Q. From which this entry was posted?
A. It is.
70 Q. Are these entries, folio 38 of the journal, to which you have just referred, in your handwriting?
A. They are.
Q. And these entries following the entry of "Editorial," "Composition expenses," "Real-estate claims," "News agents," and so forth—are all in the business of the Sun?
A. They are.
Q. Please point in the cash book to the source of that item of $10,000 in the journal?
A. (The witness does as requested.)
Q. You turn to folio 203 of the journal?
A. Yes.
Q. Is this the Sun's cash book?
A. This is the Sun's cash book.
Q. And identify and read the entry relating to this $10,000?
A. "May 17. Editorial expense, yacht *Kanapaha*, $10,000."
Q. The entries on that page, folio 203, are in whose handwriting?

A. That of my assistant.

Q. And all the other entries on the page refer to the matters relating to the Sun's business?

A. They do.

Q. And the book was kept in the business of the Sun?

A. It is.

Q. Turn to the account in the ledger which shows that item of $10,000, posted from the journal entry, folio 38, to which you have referred?

A. There it is.

Q. You turn to folio 139 of the ledger you have already produced?

A. I do.

Q. And under date of May 31, you find what entry?

A. "Cash, $21,655.04."

Q. And that $21,655.04 is the total of the items of editorial expenses detailed on folio 38 of the journal under date of May 31, 1898. One of the items is the item of May 17, "Charter *Kanapaha* to October 1, $10,000"?

A. It is.

Q. I show you this folio 38 of the journal under date of May 31, 1898, and ask you whether on that page there is any other reference to the yacht *Kanapaha?*

A. Yes, I see an item, I think.

Q. What is it?

A. "Chubb & Son."

Q. "Ins."?

A. Yes, sir.

71 Q. Read the entry?

A. "May 31, 1898." Heading, "Editorial expense." "Chubb & Son, insurance, $1,478.64." "*Kanapaha*" on the line below.

Q. *Kanapaha* is part of that entry, is it not?

A. It is.

Q. And the $1,478.64 are part of the $21,655.04, the total of editorial expenses detailed in the journal under May 31, 1898, and posted in the ledger account to which you have already referred?

A. Yes, sir.

Mr. HUGHES: Will counsel please produce the policy of insurance written upon the yacht *Kanapaha?*

Mr. BARTLETT: I have no policy of insurance and have never seen it.

Q. Is there any entry in the cash book which is the source of that item "Chubb & Son, insurance, $1,478.64, *Kanapaha*"?

A. Undoubtedly there is.

Q. Please point it out.

A. *There* is the item.

Q. You turn to the folio 209 of the same cash book to which you have already referred?

A. Yes, sir.

Q. And you find the entry in the handwriting of your assistant?
A. I do.
Q. Under what title?
A. "May 31. Editorial expense."
Q. One of the items under that heading is what?
A. "Chubb & Son, ins. yacht, $1,478.64."
Q. Have you any other entry of that $1,478.64 in any book of account of the Sun?
A. Not by itself.
Q. Have you in conjunction with any other, except of course the ledger entry to which you have already referred, which includes that?
A. I have not to my best knowledge.
Q. Have you any voucher for that payment?
A. I believe there is a receipt among the documents.
Q. That is a debit to the Sun, is it not, in the book to which you have just referred—in the cash book?
A. It is.
72 Q. Please produce the receipt that the Sun received on making that payment?
A. (The witness does as requested.)
Q. Have you that receipt?
A. I have.
Q. And you now produce it. This is the receipt which the Sun received on making the payment of $1,478.64 insurance on the yacht *Kanapaha?*
A. It is.

Mr. HUGHES: I offer the receipt in evidence.
Objected to as incompetent, improper, irrelevant, and immaterial and on the specific ground that the insurance relates to the first charter-party, which had expired at the time of the loss of the vessel.
Objection overruled. Respondent excepts.
It is marked Libellant's Exhibit No. 8.

Q. Is there any other item in this journal of insurance moneys for the yacht *Kanapaha* paid by the Sun?
A. My memory does not carry all the items.
Q. Will you look and please see?
A. If you give me an idea of date that will help it.
Q. Look at the date of July 12, 1898.
A. I find an entry.
Q. You turn to folio 68 of the journal you have already identified.
A. I do.
Q. Respondent's journal. Under date of July 12 you find what entry?
A. "Spanish war, July 12, Chubb & Co., ins., $1,625.04."
Q. The words "Spanish war" constituted a heading under which there are several items, does it not?
A. It does.
Q. And the first of these items is that of July 12, "Chubb & Co., ins., $1,625.04." Have you the voucher for that payment?

A. I have (producing it).

Mr. HUGHES: We offer it in evidence.
It is marked Libellant's Exhibit No. 9.

Q. Have you another voucher for insurance on the yacht *Kanapaha?*

A. I appear to have (producing it).

73 Q. Dated July 30, 1898, for cost of insurance on yacht *Kanapaha* from August 2d, 1898, for one month?

A. Yes.

Mr. HUGHES: We offer it in evidence.
The COURT: Did that expire before this loss?
Mr. BARTLETT: Yes, sir.
The COURT: What was the date of the loss?
Mr. BARTLETT: September 5th.
The receipt is marked Libellant's Exhibit No. 10.

Q. Will you please show me the other item in the book of this payment of insurance?

The COURT: What was the last payment?
Mr. HUGHES: $746.64.

Q. Have you the entry in the journal referring to that?
A. I have.
Q. Under what date is it?
A. Under date of August 16.
Q. Under what heading?
A. "Spanish war."
Q. And there are a number of items there under the "Spanish War" heading?
A. There are.
Q. Read the entry which covers the insurance?
A. "August 16, insce. on *Kanapaha*, $746.64."
Q. To what account were those entries under the heading "Spanish war" in the journal posted in the ledger?
A. Spanish War account.
Q. Will you produce the Spanish War account?
A. This is on folio 499.
Q. Of the ledger. This is the Sun's ledger?
A. It is.
Q. In whose handwriting are the entries there?
A. My own.
Q. And you point out what item as including the premiums on insurance to which you have referred?
A. $15,580.73.
Q. That $15,580.73 is the total of all the items under the heading "Spanish war" in the journal on folio 80?
A. Of that date.
Q. And includes this item of $746.64?
A. It does.

74 Q. And the other item of insurance which you pointed out on folio 68 of the journal, "July 12, Chubb. & Co., ins. $1,625.04" was also posted in the Spanish War account of the ledger?

A. It was.

Q. And forms part of what item?

A. Item July 31, $15,680.65.

Q. That item was the total of the Spanish War items, folio 68 of the journal?

A. The journal.

Q. This Spanish War account on the left hand side has its first item May 31—what?

A. Items previously charged to editorial expenses.

Q. Please inform me what items have gone into that total of $25,498.91 debited to the Spanish War account on May 31, 1898, at the opening of said account opposite the heading "Items from charges to editorial expenses."

Objected to.

Q. What I want to know, is, whether the items of $5,000 and $10,000 paid for the yacht *Kanapaha*, which you have referred to as charged to "Editorial expense," included in this item brought to the debit of the Spanish War account?

A. They are.

Q. That account was opened on what date? What is the first entry in the account?

A. 1898, May 31.

Q. It is headed in what way?

A. "Spanish war"—"War declared April 21 by Congress,"—"April 25, 1898."

By the COURT:

Q. Between what dates does that run?

A. May 31 and December 31, 1898.

By Mr. HUGHES:

Q. Can you inform me whether there are any items relating to the yacht *Kanapaha* other than the $5,000 and $10,000 respectively, to which you have already referred, and other than the insurance premiums to which you have referred, included in those
75 debit items in the Spanish War account in the ledger?

A. The Spanish War account covers all the items of the war, and I suppose in that must be others included.

Q. Have you in the journal details of the items that went to the Spanish War account?

A. Not in detail, they are bulked there.

Q. There are some details?

A. There are some details.

Q. Please point out the items which relate to the expenses and wages of the persons employed on the *Kanapaha* after April 1, 1898.

A. I can't do that.

Q. I call your attention to the account in the journal, April 30, 1898, and to the heading "Editorial expense account." I would like to ask whether in the journal there are not some items referring to the expenses incurred in connection with the yacht *Kanapaha* in April, 1898.

A. Probably, yes.

Q. You know that there are, do you not?

A. Yes; I know there are.

Q. Can you point them out?

A. I see none other than what I pointed out in the previous instance.

Q. Can't you in a moment, taking the book and looking at it, identify some of these items?

A. The only item there relating to the *Kanapaha* is that $5,000.

Q. Can't you by looking at other folios of the book find out these items?

A. You said on April 30.

Q. I did mention that because I thought that would assist you. You know better about these than I do. If you will point out where these items are it will save time.

A. I see an item here which I infer is a *Kanapaha* item under date of May 31. "White & Co., *Kanapaha*."

Q. How much?

A. "$509.82."

Q. Who are White & Co.?

A. I don't know.

By the COURT:

Q. Do you know what the item is for?

A. I think I know, but I am not sure of it.

By Mr. HUGHES:

Q. Is there a source of that item in the cash book?

A. There may be in more detail.

76 By the COURT:

Q. Do you have a voucher corresponding to that entry?

A. I may have. There it is.

By Mr. HUGHES:

Q. You refer to fol. 193 of the cash book?

A. I do.

Q. Under what date?

A. May 3, 1898.

Q. Read the entry.

A. "Editorial expense, White & Co., yacht account, $509.82."

Q. Was there a provisional account kept of expenses in connection with the yacht *Kanapaha?*

A. There was.

Q. Have you that account here?

A. The account you have already seen called "Spanish war."

Q. You call the account in the ledger, "Spanish War account," a provisional account?

A. I do.

Q. And that is the only provisional account that there was of these expenses?

A. Yes, sir.

Q. Have you produced all the vouchers that you have?

By the COURT:

Q. What do you mean by the word "provisional" there?

A. I mean an account which shall include all items until they are charged to their final accounts.

By Mr. HUGHES:

Q. I call your attention to the "Spanish War account." The entries on the debit side are monthly; entries at the end of the month, are they not?

A. They are.

Q. And the details of these entries are found in the journal and cash book?

A. Yes.

Q. Anything else?

A. What I meant by my hesitation is that the journal may not have given full detail.

Q. Do you know any other source of information other than the journal and cash book of the entries that went to the debit of the "Spanish War account"?

77 A. Bills of some of the reporters may have fuller details.

Q. Have you such bills here?

A. We have.

Q. Have you some here?

A. We have.

Q. Will you produce them.

A. (The witness produces the bills.)

Q. What reporter handed in these bills that you have before you?

A. These are the accounts of Mr. W. J. Chamberlin.

Q. And submitted to the Sun?

A. And submitted to the Sun.

Q. Reaching your department?

A. They did.

Q. Came to your charge?

A. Yes, sir.

Q. Are there items in those bills relating to the yacht *Kanapaha*?

A. Undoubtedly.

Q. Are there items which entered into these bills which were charged to the Spanish War account in the ledger?

A. Undoubtedly.

Q. Please pick out from those, those that contain items relating to the *Kanapaha*.

A. I regret to say I cannot do that.

Q. Do you mean that there is nothing to identify the items on these bills?

A. These bills are covered by drafts; the drafts were entered in bulk.

Q. Whose drafts?

A. W. J. Chamberlin's.

Q. On whom?

A. On the Sun.

Q. Will you allow me to look at these bills?

Mr. BARTLETT: I object to that. They have no right to ransack our accounts. We will admit Mr. Chamberlin was on the yacht and employed by us and paid by us.

Q. I want to know whether there are in these papers——

Mr. BARTLETT: I object to counsel examining our papers.

78 Q. I would like to find out whether there are here any vouchers of payments to Captain Packard and persons who were employed in the navigation of the yacht *Kanapaha?*

A. I don't know that.

Q. Will you please glance through here with me and inform me.

Mr. BARTLETT: We are going to have Chamberlin here. Why can't he answer that? Don't go into the examination of those papers unless the court orders it.

The COURT: Hand the witness those papers. Let him run over them and see if he can identify any.

Q. My eye comes on a batch of papers headed "Steamship *Kanapaha*, June 22, 1898." Look at that and tell me if there is anything there relating to the expenses connected with that boat?

A. It would seem to be from the statement of the paper itself. I will say in explanation for the court that Mr. Chamberlin drew a draft which covered all these papers and I entered the draft in bulk. That is all I know about it.

Q. Have you any voucher showing advances to Capt. Packard amongst any of these papers?

A. Not to my knowledge.

Q. Will you glance through quickly and see if you have or not? Do you find anything there?

A. I do not.

Q. I show you this among those papers that you have produced, dated June 22, 1898, "To steamship *Kanapaha*, bought of C. E. Johnson & Co." Is that voucher for supplies to the yacht *Kanapaha*, for amount of which drafts were drawn on the Sun by W. J. Chamberlin?

Objected to.

The COURT: He has answered that, that he drew the draft in bulk.

The WITNESS: Chamberlin drew the draft.

Q. That is true of these particular vouchers?

79 A. It appears to be. I didn't contract the bill. I don't know.

Q. But you honored these vouchers?

A. I did not.

Q. The Sun did?

A. The Sun honored the draft of W. J. Chamberlin.

Q. Including these?

A. I don't know.

Q. Is there any draft or order attached here referring to it?

A. There is not.

Q. Did these come to you with a draft drawn by Chamberlin, these vouchers?

A. They did not. They were rendered to me after Mr. Chamberlin's return.

Q. By Mr. Chamberlin?

A. By Mr. Chamberlin.

Q. As a report of what had gone into the drafts he had drawn?

A. His account of the expenses.

Q. In the amounts furnished to him by drafts drawn on the Sun?

A. The drafts drawn on the Sun were doubtless included in these amounts. He had other ways of getting money.

Q. Have you got an account submitted by Mr. Chamberlin to you to which you refer?

A. I refer to this account.

Q. What do you refer to as the account submitted at the time these vouchers were handed to you?

A. I don't understand your question.

Q. To what account do you refer as the one submitted to you at the time these headed "Steamship *Kanapaha*" were handed to you?

A. These that I hold in my hand.

Q. Can you point out the one that accompanied the vouchers?

Mr. BARTLETT: In order to stop this waste of time we will admit that we paid all the running expenses of the yacht from the making of the second charter-party to the time of the loss.

Mr. HUGHES: Your statement as to the payment of all expenses, then, covers from May 14, 1898, to Septembe- 5, 1898, and that includes the wages of Captain Atkinson, who was captain of the boat at the time of the loss.

Mr. BARTLETT: I presume so. I think he has testified to that already.

80 Q. Have you any vouchers here from the period from April 1 to May 14?

The COURT: I won't go into that any more.

Q. Will you please turn again to the Spanish War account. In that ledger on the credit side of that account under date of May 31, 1898, you find what item—the third on the credit side of the page?

A. "May 31. Press, *Kanapaha*, $1,444.25."

Q. Will you turn to the journal to show the source of that?

A. I will turn to the cash book to save time.

Q. Can you state without turning to the books if those were receipts by the Sun from representatives of other newspapers for privileges on board the yacht *Kanapaha* which the Sun furnished?

A. No.

Q. Point to the source of the item?

A. I refer to the Journal, folio 35, date May 31, under the head, "May 31, 1898, subdate, Spanish war, May 28. Press account, *Kanapaha*, $1,444.25."

Q. That says "Press account," does it, or "Press account *Kanapaha*"?

A. "Press account *Kanapaha*."

Q. What do the words "Press" mean?

A. I infer they refer to the New York Press newspaper.

Q. Is that a credit item?

A. That is a credit item.

Q. A credit to whom?

A. To the "Spanish War account."

Q. For moneys received by the Sun?

A. Yes, sir.

Q. From the New York Press?

A. Undoubtedly.

Q. In connection with the yacht *Kanapaha*?

A. Apparently so from the entry.

Q. The paper, the New York Press, I suppose?

A. The New York Press; yes, sir.

Q. Have you any entries there, or in this book, of receipts from Harper's Weekly by the Sun in connection with the Kanapaha?

By the COURT:

Q. Doesn't the journal show all these?

A. Yes, but the journal takes longer to run through. I
81 guess I will have to do it, though. Under head of "June 30, 1898, Spanish war. Subdate, June 11."

By Mr. HUGHES:

Q. Read all the items relating to the *Kanapaha*.

A. "Harper's, *Kanapaha*, 500."

Q. It is dollars, is it not?

A. Book-keepers don't put the word dollars in. Of course the word "dollars" is understood.

Q. It is carried out as dollars in the total?

Mr. BARTLETT: That is "500."

A. Dollars is meant.

Q. There are other items under the heading "Spanish war" under this date June 30, 1898, are there not?

A. Appear to be.

Q. Relating to other papers?

A. Undoubtedly.

Q. All credit items of moneys received by the Sun?

A. Yes.

Q. Read them.

A. "June 2, Detroit news account, *Kanapaha*, 250." "June 6, Scrib.'s, *Kanapaha*, 1,000." "Press, *Kanapaha*, 500," you have.

Q. Isn't the Globe-Democrat 250?

A. The Globe-Democrat is 250, but it does not say "account *Kanapaha*." We had other interests.

Q. And that is true of "Journal, 1,000"?

A. It is.

Q. But "Press, *Kanapaha*, 500"?

A. Yes. June.

Q. What do you have below that? Is that in relation to the *Kanapaha?*

A. It is not.

Q. "Harper's, *Kanapaha*, 500"?

A. Yes. June 11 we have "Harper's, 500"—that has been given. That is all I recognize as belonging to the *Kanapaha*.

Q. What is that under "*Kanapaha*" opposite "Journal"?

A. That is "Harper's."

Q. What is *that?*

A. "&c."

Q. Opposite "Journal"?

A. No, it is "*Kanapaha*, &c., 500."

By the COURT:

Q. That is all under the first charter. Was there anything under the second charter?

82 Mr. HUGHES: That was under date of June 30; the first charter expired June 1st.

By Mr. HUGHES:

Q. Is there a Spanish War account under date of May 31?

A. There is not. It was opened that day.

Q. This is all under "Editorial expense"?

A. It is.

Q. Are there receipts from other newspapers in connection with the *Kanapaha* under it, under "Editorial expense" prior to June 1st, 1898?

A. There were not.

Q. There were moneys received by the Sun during that period, were there not, in connection with the *Kanapaha?*

A. No.

Q. Then there were no other reporters of other papers that you know of on the yacht *Kanapaha* until after June 1st?

Mr. BARTLETT: How does he know?

A. I made no contracts.

Q. Have you got the voucher which you received, or which came to your possession, for the payment of $5,000 on April 2d for the yacht *Kanapaha?*

A. Payment to whom?

Q. To Manning.

A. I don't know. I think not.

Q. Will you look and see, please?

A. If we have those vouchers they are in our archives, but I haven't got them here.

Q. And you haven't the one for the $10,000?

A. We have the check here, and that is voucher sufficient.

Q. You haven't any other voucher here?

A. No.

Q. Will you kindly see if you have a receipt given by Mr. Manning for $5,000 or $10,000 and produce them here after Monday morning?

A. I will.

Q. Was there not some account kept of some sort, of these items prior to their entry in the cash book, some voucher account or account of these memorandum slips that you have mentioned?

A. Do you refer to payments with us? Those memorandum slips, that is all.

Q. Didn't you have some book account of these memorandum slips?

A. No, sir.

83 Q. Or of the vouchers?

A. No, sir.

Q. Do you have any voucher books with stubs, regular vouchers?

A. No.

Q. From what source did you get the items that you put on the memorandum slips?

A. Memoranda doubtless taken at the time the check was drawn.

Q. From the check book?

A. At the time the check was drawn, from memory.

Q. Have you the check books from which these checks were taken which were given to Manning?

A. The stubs are here. We have not the checks themselves. Which stubs?

Q. $5,000, April 1st, 1898.

A. (The witness produces the stub.)

Q. Read it.

A. "No. 37951." Date, "April 2d, 1898." "Order Thomas Manning. Account of —— ——; amount, $5,000."

Q. Refer to the second one, please.

A. That stub is not here; it is in use in the office at this moment.

Q. Of the second check?

A. Yes.

Q. Will you have that here Monday?

A. I will have it here.

Q. Have you the stubs for those insurance premiums of May 31, 1898?

A. Yes, sir; what is the number of the check?

Mr. BARTLETT: Isn't the check enough without the stubs?

Q. 38969?

A. Check No. 38969. Date, May 31, 1898. Order of Chubb & Son, account of —— ——, $1,478.64.

Q. No. 39812?

A. Check No. 39812. Date, July 12, 1898. Order Chubb & Son. account of —— ——, $1,625.04.

Q. 40423?

A. 40423. Date, August 16, 1898. Order Chubb & Son, account —— ——, $746.64.

Q. These three checks, the stubs of which you have just referred to, are all signed by you, are they not?

A. They are.

Q. To whom did you deliver those checks?

A. My memory is that they were sent by mail.

84 Q. To the drawee?

A. To Chubb & Son.

Q. By you?

A. By me or by my assistant.

Q. And before you sent these checks you had received these bills which have been introduced in evidence, Exhibits 8, 9, and 10, had you not?

A. We had.

Q. And you sent these back with the check stamped, "Please receipt and return to L. O. Macdaniel, the Sun, New York"?

A. We did.

Q. Take the journal and turn to July 31, 1898, and tell me if you find there entries of receipts from other newspapers in connection with the yacht *Kanapaha*.

A. I find entries of receipts Spanish war, but the *Kanapaha* is not specified.

Q. Is there any other account which would show?

A. The cash book might throw some light on it (referring to the cash book).

Q. The entry in the cash book is "Spanish war, Harper's Weekly, June 1st to July 1st, $500."

A. It is.

Q. Does that enable you to state whether that is in connection with the *Kanapaha?*

A. My recollection is that it was not.

Q. You find under July 30, 1898, what entry?

A. "Spanish war, Press, *Kanapaha* and *Premier*, $1,000."

Q. What is the *Premier?*

A. *Premier* is the name of another vessel.

By the COURT:

Q. In the same employment?

A. The same employment.

By Mr. HUGHES:

Q. You find under date of August 5th, 1898, what entry in the cash book?

A. In the cash book, "Spanish war, Harper & Brothers, *Kanapaha*, 500."

Q. *Kanapaha*, July?

A. *Kanapaha*, July, 500.

Q. These items that you have just read, both the one of July 30 and of August 5, were entries of moneys received by the Sun from the newspapers you refer to?

A. They are.

85 Q. These moneys which were received and so entered and credited to the Spanish War account were deposited in bank to the credit of the Sun?

A. They were.

Q. When you got the check from the Press, the New York Press, where did you first enter that check?

A. The cash book.

Q. The entry you have identified?

A. Yes, sir.

Q. And from that you posted it into the journal?

A. Yes.

Q. From that to the Spanish War account?

A. In the ledger.

Q. And those are the only entries and books relating to the receipts?

A. They are.

Q. Is there any other account or any items in any book or memorandum that you have showing receipts by the Sun from any newspaper in connection with the *Kanapaha*?

A. Not to the best of my knowledge.

By the COURT:

Q. How did these checks come to your hands?

A. Some of them by mail.

Q. Addressed to you?

A. No, they would be addressed to the Sun.

Q. How did they actually come to your own hands, through what channel?

A. Various channels. Some of them, for example, turned in to me by Mr. Lord; others came by mail and came to my department.

Q. If they came by mail they would be addressed to the Sun?

A. In general, yes.

Q. Who opened letters addressed to the Sun?

A. A young man whose particular business it is. He departmentizes them.

Q. He separates them?

A. He separates them.

By Mr. HUGHES:

Q. When Mr. Lord put moneys in your hands did he accompany them by any statement showing the source from which they were derived or any written memorandum?

A. He did not.

Q. Simply gave them to you?

A. He did.

Q. And these items that you have pointed out of receipts
86 from newspapers in connection with the *Kanapaha* are included in these details and entered monthly to the credit of the "Spanish War account," folio 499 of the ledger?
A. That is so.

Mr. HUGHES: I offer in evidence the "Spanish War account," folio 499.

Mr. BARTLETT: They have all been read in evidence. I object to the admission of other entries in evidence as improper, irrelevant, and immaterial.

The COURT: I admit it.

Mr. HUGHES: The heading of the whole account is, "Spanish war."

"DEBIT SIDE."

1898, May	31.	Editorial expense. Items previously charged to editorial expense, fol. 29.....	$25,498.91
" "	"	Cash, fol. 41.....	25,121.85
" June	30.	Cash, fol. 51.....	14,936.56
" July	31.	Cash, fol. 68.....	15,680.65
" August	31.	Cash, fol. 80.....	15,580.73
" September	30.	——."	

Mr. BARTLETT: I object to any items after the loss of the vessel.

The COURT: Yes, I exclude those—anything that does not pertain to this vessel.

Mr. BARTLETT: Not one of these items just read refer to the *Kanapaha*.

The COURT: I suppose these include certain items which have been before stated.

The WITNESS: These do.

The COURT: I allow the question as to the last item there by which this account was closed on the books.

By the COURT:

Q. On looking at your book can you tell us what was the aggregate amount of the debit side of this provisional account as
87 you have called the account headed "Spanish war"?
A. $147,374.
Q. Is that account balanced or unbalanced?
A. Balanced.
Q. When was it balanced?
A. December 31st, 1898.
Q. Which was the shorter side?
A. The credit side was short.
Q. How was that account balanced?
A. By charging another account to deficit.
Q. And the deficit was how much?

A. I must say in explanation that each month there was a proportion charged to its final account and that December 31st the balance was $27,131.11.

By Mr. HUGHES:

Q. Where do you find any entry of any proportion of these debit items being charged to any other account?

A. For example, on June 30 I find "Editorial expense" charged $4,909.32.

By the COURT:

Q. Explain what that means?

A. Those are positive charges.

Q. That means what?

A. That means from the Spanish War account this sum was taken and charged against the editorial expense account.

Q. For what purpose—why?

A. For the purpose of taking that amount out of the Spanish war and definitely charging it to the editorial expense account.

Q. By that do you mean that the debit side does not show the whole by so much?

A. No.

Q. How is it taken out then? That looks as if there was a deficit. You have given credit to editorial expenses?

A. I debited editorial expenses.

Q. In another account. But here you credit Spanish war with so much which elsewhere must be charged to editorial expenses?

A. Exactly.

By Mr. HUGHES:

88 Q. On May 31, 1898, you charged to the Spanish War account for items previously charged to "Editorial expense" $25,498.91, don't you?

A. Yes, sir.

Q. On the same date you credited the same account with the same amount, didn't you?

A. I did.

Q. So that the entries balanced each other?

A. That was for the object of making the Spanish War account show the whole expenses of the war.

Q. On the same date, May 31, 1898, as the second item on the debit side you charged to the Spanish War account $25,121.85. That was the total of the entries you thought applicable to the Spanish war, of the expenses of the Sun?

A. For the month of May.

Q. In the same month you charged to "Editorial expense" and credited to the Spanish War account $11,348.50?

A. I did.

Q. That meant the Sun had received from some source the difference between $11,348.51, charged to the editorial expense account and this amount, $25,121.85, charged to the Spanish War account?

A. No, it did not.
Q. What did it mean?
A. It meant that that amount which has been debited to the Spanish War account in May, $25,121.85, I had received vouchers of which there could be no question for $11,348.50, which should go to the "Editorial expense."

By the COURT:

Q. Which properly belonged to the publication of the Sun?
A. Yes.
Q. Not including claims against other papers?
A. Nothing to do with other papers.
Q. What the Sun paper should bear?
A. Yes, sir.

By Mr. HUGHES:

Q. Then I understand that the end of May those expenses which had been included in this debit charge to the Spanish War account, for which you had definite vouchers, were definitely and finally charged to the editorial expense account of the Sun and the
89 amount of such definite claims was credited to the Spanish War account.

Objected to as irrelevant.
The COURT: I understand that is precisely what the witness said before.

Q. And that was done each month through the time this account was kept?
A. It was.
Q. The result was that every item charged to the Spanish War account was ultimately charged to the editorial expense account of the Sun?
A. In general, yes.
Q. Is it not a fact that there are included in the items on the credit side of this account certain receipts from other newspapers in connection with the *Kanapaha?*
A. Certain receipts are included.

By the COURT:

Q. The items of which you have before stated?
A. I have.

By Mr. HUGHES:

Q. And the difference between the amounts of such receipts and the amounts charged to the Spanish War account were then finally and definitely charged to the editorial expense account?

Objected to as having been answered three times.

A. It was.
Q. And the last item under date of December 31, 1898, of the Spanish War account was the closing, by taking out of the Spanish

War account and charging finally to the editorial expense account of the Sun the sum of $20,731.11?

A. That is the final entry.

Q. And that closed the provisional account?

A. Yes.

Q. Have you produced here any letters which have been received by the Sun from any other newspaper association or company publishing a newspaper with reference to the furnishing of privileges upon the yacht *Kanapaha?*

A. I find no such letters in existence.

90 Q. Have you produced here any letter books of the New York Sun showing letters written by it or on its behalf to any person or companies or newspapers relative to privileges on the yacht *Kanapaha?*

A. I am not authorized to make a contract, so I produce no such books.

Q. You are here as a witness. I understand Mr. Dana has been subpœnaed, but we don't want to trouble him. Are there not such books here, Mr. Bartlett?

A. I can answer. Demand was made for those books, but they were not in existence. The Sun does not keep such books.

Q. The letter books of 1898 are not in existence?

A. There are no letter books of 1898.

Q. Are there no books in which copies of letters written by the Sun in May, 1898, were kept?

A. Some clerks keep their own copy books, but nothing you can call the general books of the Sun.

Q. Have you looked to see if there are any such letters?

A. I have.

Q. Have you found any such?

A. I did not.

Q. Have you any memorandum or book or entry of any sort other than these that you have identified referring to the *Kanapaha?*

A. I have not.

Q. Have you looked for any such?

A. I did.

Q. What are these other books that you have produced here?

Mr. BARTLETT: Don't answer. They speak for themselves.

Q. In these other books are there any entries relating to the *Kanapaha?*

A. I don't know without examination.

Q. Have you examined them?

A. Not recently.

Q. So that you can state whether or not there are any such entries?

A. There is an account, an amount in which the *Kanapaha* was probably interested, but it does not come separately as a *Kanapaha* account.

91 Q. Will you show me that, please?

A. It will take a few minutes to find it.

Mr. BARTLETT: Refer to that only by name.

A. I find I am mistaken. There is nothing there about the *Kanapaha.*

Q. Have you produced any policy of insurance written upon the yacht *Kanapaha?*

A. I have not.

Q. Have you searched for any such?

A. I have.

Q. But you have not found it?

A. I have not.

Q. Did you make any inquiry in the office of the Sun relative to it?

A. I did.

Q. Have you any other vouchers here relative to the *Kanapaha?*

A. I have accounts of some of the reporters.

Q. Relating to that boat?

A. Yes, sir.

Q. Will you let me see them, please?

Mr. BARTLETT: We admit that we had certain reporters on the boat and we paid them and paid their expenses. I object to anything further.

Mr. HUGHES: Will you admit that you paid all the expenses of the yacht *Kanapaha,* including the salaries of the officers and crew, from the first of April, 1898, down to the time of the loss?

Mr. BARTLETT: I have made one admission under the second charter-party.

The COURT: The reporters did not belong to the yacht herself. Do you admit that at all times you had one or more paper employees on the yacht?

Mr. BARTLETT: She may have been lying at port and they have been off some day, but I admit we had reporters on.

Mr. HUGHES: From April 1st, 1898, onto the time of the loss?

Mr. BARTLETT: You can ask Chamberlin. He will testify to that.

92 By the COURT:

Q. Were you on the yacht at all?

A. I was not.

The COURT: He can't testify about it then.

Mr. HUGHES: I understand the admission is from May 14, 1898.

Mr. BARTLETT: We had reporters on board and paid their salaries. I don't know that we had anybody but Chamberlin on at the time of the loss. We admit we had one on.

By Mr. HUGHES:

Q. Do these vouchers or accounts of reporters that you have here relate to the period between April 1st, 1898, and June 1st, 1898, any of them?

A. Yes, sir.

Q. Will you please produce them?

The COURT: It seems to me we have enough of that. As I understand the admission was that from May 14 on, the Sun had a reporter on the yacht during her service and that the Sun paid the expenses of this Mr. Chamberlin or any other reporter who was there. Was there any other paper that had reporters on the yacht? Or were all the reporters in the Sun's employment?

Mr. BARTLETT: I think at one time there were men from other papers on board. But I think Mr. Chamberlin can tell, the witness cannot.

Mr. HUGHES: I am in position to offer proof showing that the same condition of things existed between April 1st, 1898, and May 14, 1898.

The COURT: I rule that is immaterial.

Mr. HUGHES: What I mean by the same condition of things is that the Sun during this period continuously had reporters on the yacht *Kanapaha* and paid all the expenses of such reporters,
93 and also during this period paid all the running expenses of the boat, the salaries and wages of the officers and crew and the expense of putting her in commission and supplying her with coal and provision-.

The COURT: I think it is unnecessary to go into that any further than it has been done already.

Mr. HUGHES: We except.

Cross-examined by counsel for respondent.

By Mr. BARTLETT:

Q. At the time of the payment of the first check, $5,000, was Mr. Laffan in Europe?

A. He was in Europe.

Q. Did Mr. Lord make any statement to you about any trustee refusing to sanction the making of the charter-party?

Objected to as incompetent, irrelevant, and as not binding on the libellant in this action.

The COURT: I exclude that question. I cannot take the witness's testimony as to Mr. Lord's statements. That is not cross-examination.

Q. Did you give the $5,000 check to Mr. Chester S. Lord?

A. I did.

Q. What did he say to you?

Objected to as incompetent and irrelevant: that any statement made by Chester S. Lord to the witness is not binding upon the libellant, that the witness is not connected with the libellant in any way and the testimony offered is hearsay.

The COURT: I allow it so far as to admit any statements made by Mr. Lord to the witness in connection with the direction
94 to draw the check. I don't allow conversation about it after it was done.

Mr. HUGHES: We except.

The COURT: My ruling is that whatever was said by Mr. Lord to

you in connection with the direction to draw the check, or send it or deliver it, you should state, but that mere conversation over it afterwards and independent of those acts should not be given.

Mr. HUGHES: We except.

A. In the absence of the manager the proper person authorized, Mr. Lord, did make some explanations of why he wanted the check.

Q. The manager was Mr. Laffan?

A. Mr. Laffan.

Q. What did he say?

A. He said that with the check he hoped that Manning would accept his signature, as the secretary had refused to sign the charter-party.

Q. Who was the secretary?

A. Thomas Hitchcock.

Mr. HUGHES: I would like you to produce on Monday any voucher which you said you would look for, received by the Sun or in the office of the Sun, on the payment of the $5,000 and $10,000 respectively on April 2 and May 14, 1898.

Mr. HUGHES: I call for the files of the Sun of May 2 and 3, 1898.

They are produced by counsel for respondent.

Mr. HUGHES: I offer in evidence from the Morning Sun, published by the respondent on Monday, May 2, 1898, on p. 5 of the said paper the following paragraph purporting to be a news item of Key West of April 28:

"For instance, on the first night out and before private signals had been supplied to the newspaper dispatch-boats, one of the torpedo-boats in the course of its duty saw the Sun's *Kanapaha* looming up through the night. The *Kanapaha* has an outline which suggests — 2."

95 Objected to as irrelevant and immaterial, incompetent and improper.

The COURT: I will admit the passages now and rule on them hereafter.

Mr. HUGHES: I offer in evidence from the Sun newspaper published by the respondent on May 3, 1898, on p. 3, the following:

"The Sun's yacht, the *Kanapaha*, met the *Nashville* 15 miles northeast of Havana; both were looking for the flagship."

Objected to as incompetent, improper, irrelevant and immaterial; that it is admitted the *Kanapaha* was used.

Mr. HUGHES: I offer in evidence from the Sun newspaper published by respondent May 19, 1898, on p. 2, the following:

"On reaching Cape Haytien the Sun's yacht *Kanapaha* found a pile of coal of comfortable size on shore," and another statement: "But when Captain Packard of the *Kanapaha* got ashore he found that the coal belonged to a man who knew how to corner the market."

The COURT: Strike out the last question.

Mr. BARTLETT: We except.

Mr. HUGHES: I offer in evidence from the Sun newspaper of May 29, 1898, on the first page, the following:

"The Sun's yacht *Kanapaha* returned today from her cruise along the north shore of Cuba."

Mr. BARTLETT: I object on the same grounds as previously stated.

Mr. HUGHES: I also offer in evidence from the Sun newspaper of June 14, 1898, published by the respondent, p. 2, the following:

"Before it was sighted a party from the *Kanapaha* including the Sun reporter, landed on the Key. While the Sun's small boat was ashore the *Suwanee's* landing party was sighted."

96 There is a great deal about the *Kanapaha* all through here, and the connection shows that that reference is evidently to a small boat taken from the *Kanapaha*.

Mr. BARTLETT: I object to the statement of counsel.

Mr. HUGHES: Then I offer the entire article in evidence. Now I offer in evidence from the Sun newspaper, published December 11, 1898, by the respondents, the following, p. 1:

"Yacht *Kanapaha* wrecked. All hands saved. One of the Sun's despatch-boats during the war."

Then special cable despatch to the Sun:

"Santiago de Cuba, Sept. 10th.—General Lawton received a despatch today from the north coast of the island saying that the steam yacht *Kanapaha*, Capt. Atkinson, was wrecked on the reefs above the Bay of Nipe north coast of Santiago province, September 8. The boat was a total loss. All hands were saved."

That is the end of the despatch. Then follows:

"The *Kanapaha* was chartered by the Sun before the outbreak of the war as a despatch-boat. She was formerly J. Pierrepont Morgan's first *Corsair*. She was built in 1880, at Philadelphia. Her length was 173½ feet, beam 23 feet, depth 11½, gross tonnage 248. Her owner was W. L. Moore."

"The *Kanapaha* sailed from Santiago with Gen. Miles and the party left for Porto Rico. When wrecked she was on her way from Ponce to Havana. She sailed from Ponce on September 1st, stopping on the way at Guanica and Mayaguez. Capt. Atkinson is a thoroughly able skipper. He has had command of a number of private yachts of prominent Americans. The *Kanapaha* was the fastest and most seaworthy newspaper despatch-boat in the West Indies during the war. The Sun's representative aboard her was Mr. W. J. Chamberlin."

97 Objected to as incompetent, irrelevant and immaterial.

Mr. HUGHES: I offer in evidence the paper itself.

Objected to as incompetent, improper, irrelevant and immaterial. And on the specific ground that respondent cannot be bound by any statement made in the paper as to a charter.

The COURT: I reserve ruling on these objections.

LEONARD O. MACDANIEL, recalled for libellant, testifies:

By Mr. HUGHES:

Q. I show you the paper marked Exhibit 3 for identification, and ask you first whether you are familiar with the handwriting of Chester S. Lord, managing editor of the Sun?

A. I am.

Q. And have you seen him write?
A. I have.
Q. I will ask you whether the superscription to that paper, marked 3 for identification, the words "Chester S. Lord, for the Sun Printing and Publishing Association" are in the handwriting of Mr. Chester S. Lord, managing editor of the Sun?
A. The words "Chester S. Lord" I should say are, but the balance I would be doubtful of.
Q. Will you say the balance is not in Mr. Lord's handwriting?
A. No.
Q. I now show you the paper marked Libellant's Exhibit 4 for identification, and ask you whether the words subscribed thereto, 'Chester S. Lord, for the Sun Printing and Publishing Association," are in the handwriting of Chester S. Lord?
A. The words "Chester S. Lord" are, but the balance I am uncertain of.
Q. You won't say the balance is not in his handwriting?
A. I will not.
98 Q. Now I show you Exhibit 5 for identification. The words "Chester S. Lord, for the Sun Printing and Publishing Association" are in whose handwriting?
A. The words "Chester S. Lord" in Mr. Lord's handwriting, the balance I am not sure about.
Q. You won't say the balance is not in his handwriting?
A. I will not.

JAMES P. J. MORRIS, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. Where do you reside?
A. 132 East 128th street, New York.
Q. What is your occupation?
A. Law clerk.
Q. Where are you employed?
A. At 45 Broadway.
Q. In whose office?
A. With Hyland & Zabriskie.
Q. Where were you employed on the 2d day of April, 1898?
A. At their office, 45 Broadway.
Q. Are you a notary public?
A. I am.
Q. I show you a paper and ask you to look at the signature "James P. J. Morris, notary public, N. Y. Co.," and ask if that is your handwriting?
A. It is.
Q. Is that your seal that you affixed?
A. It is.
Q. Did you affix it at the time of that superscription?
A. I did.
Q. That is appended to a certificate of acknowledgement in which

there are certain interlineations, or rather words written in in ink. Are those words written in in ink in your handwriting, in the certificate of writing?

A. They are.

By the COURT:

Q. When were those interlineations made by you?

A. Before I took the—at the time I took the acknowledgement of Mr. Lord.

By Mr. HUGHES:

Q. You took the acknowledgement of Mr. Chester S. Lord at that time?

A. Yes.

99 Q. To his execution of the paper now in your hand?

A. Yes, sir.

Q. Was this signature, "Chester S. Lord, for the Sun Printing and Publishing Company" at that time on the paper?

A. At the time I took it?

Q. At the time you took the acknowledgement of Mr. Lord?

A. It was.

Q. What did you ask Mr. Lord with reference to the execution of that paper at that time?

Mr. BARTLETT: I object to any examination without having the opportunity to look at the paper and until the paper is offered in evidence. That the witness cannot be examined until the paper is offered in evidence, because if the paper is executed his evidence will be absolutely immaterial.

The COURT: I allow the question.

A. I asked him if he knew the contents of this instrument and had signed this instrument as it was signed, "Chester S. Lord, for the Sun Printing and Publishing Company," and if he executed the above instrument as on behalf of his firm, under the authority of said company as its act and deed, and he said that he did.

Q. Did you also ask him whether he was authorized to execute it?

Objected to as leading and improper.

A. I did.

The COURT: I disallow any further question about it.

Mr. HUGHES: We except.

The paper is marked for identification Libellant's Exhibit 12.

Cross-examined by counsel for respondent.

By Mr. BARTLETT:

Q. In whose office are you?

A. Hyland & Zabriskie's.

100 Q. Where is that?

A. 45 Broadway.

Q. Hyland & Zabriskie?
A. Yes, sir.
Q. Is that connected with the office of the attorneys?
A. No, sir, a different firm entirely.
Q. How long have you been a law clerk?
A. About fifteen years.
Q. How did you come to testify here?
A. I was subpœnaed.
Q. With whom did you converse before you gave your testimony?
A. With whom did I converse? With Mr. Manning, Mr. Murray and Mr. Hughes.
Q. I notice that when you were testifying as to what was said to you by Mr. Lord at the time, you read the words of your acknowledgment. Is that so?
A. That is right, I did; yes.
Q. In order to refresh your memory?
A. Yes, yes.
Q. So as to get it all in?
A. So as to get it all in.
Q. So as to cover your certificate?
A. Just what I administered when I took the acknowledgment.

Redirect by counsel for libellant.

By Mr. HUGHES:

Q. I call your attention to the words of the certificate of acknowledgment in Exhibit 12 for identification, to certain words struck out and to the words, "The managing editor of the Sun Printing and Publishing Company." Will you state what conversation you had with Mr. Lord at the time of the taking of that acknowledgment which led to the insertion of those words in your certificate?

Objected to, that the witness has testified on the direct and as to what he claims that Mr. Lord said to him; that it is improper on the redirect.

The COURT: I consider it insufficient for the reason that what he said covers the whole subject. I should allow him to testify if desired that previous to making those interlineations he had
101 some conversation with Mr. Lord and if he made those interlineations in consequence of those I allow him to state so. That would be for the purpose of showing that it was not an arbitrary change by the witness himself. But attendant statements by Mr. Lord himself at that time should not come in to modify the certificate itself.

Mr. BARTLETT: I object to the question as incompetent, improper, irrelevant and immaterial; and on the specific ground that the respondent cannot be bound by any statement made by Mr. Lord.

The COURT: I sustain the objection as to asking what the conversation was. But if counsel wishes to ask him whether those interlineations were made by him in consequence of a conversation had with Mr. Lord before he made them I allow that.

Mr. HUGHES: I except to the ruling of the court.

Q. I ask you to explain the interlineations in the certificate of acknowledgment of the words "Managing editor of the Sun Printing and Publishing Association"?

Objected to. Objection sustained.

Q. Did you insert the words "The managing editor of the Sun Printing and Publishing Company" in the certificate of acknowledgment in consequence of a conversation that you had with Mr. Lord?

A. I did.

Q. At the time of the acknowledgment?

A. I did.

Q. Please state what you said to Mr. Lord and what he said to you which——

Objected to.

The COURT: I sustain that on direct examination. If Mr. Bartlett wants to ask that by way of cross examination he can do it.

Mr. HUGHES: We except.

102 HAROLD M. ANDERSON, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. Where do you reside?

A. In New York city.

Q. What is your occupation?

A. Reporter.

Q. For what paper?

A. The New York Sun.

Q. How long have you been such reporter?

A. For four years on the 1st of May.

Q. Four years last past?

A. Yes, sir.

Q. Where were you employed by the respondent The Sun Printing and Publishing Association in the summer of 1898?

A. In the West Indian waters, Cuba.

Q. Were you on the yacht *Kanapaha?*

A. I was.

Q. When did you go aboard the yacht *Kanapaha?*

A. On the day she sailed from New York for Key West.

Q. What date was that?

A. I don't remember the date.

By the COURT:

Q. When was it?

A. I think it was the first of April, I am not sure about that.

Q. And remained until when?

A. I remained on the *Kanapaha*, being at times on shore and at times on other ships, until the latter part of July.

By Mr. HUGHES:

Q. With whom did you go on board?
A. I went alone from here.
Q. Did you go down with Capt. Packard when the yacht was taken?
A. Yes, sir.
Q. You were present when it was delivered?
A. Yes, sir.
Q. And did you see Petersen, the ship-keeper, at that time? Did you see a man there who had been in charge?
A. I knew him as Olaf, yes, sir; I only knew his first name.
Q. You knew him as Olaf?
A. Yes, sir.
Q. You went on board that same night, didn't you?
A. I went on board the night she was ready to sail.
103 Q. Do you know she was coaled and provisioned during the time intervening between the time you went down with Capt. Packard and when she sailed?
A. I didn't go down with Capt. Packard, I went on board afterwards, she was all ready to sail when I went on board.
Q. What other representatives of the Sun, that is, reporters were on board?
A. Mr. Chamberlin was at the pier but he did not go on board.
Q. When did Mr. Chamberlin go on board the *Kanapaha?*
A. He came on board the *Kanapaha* in Guantanomo bay some time in along the middle of June.
Q. Was Mr. Spears on the yacht at the start?
A. No, sir, not when she left here.
Q. He was a reporter of the Sun?
A. Yes, sir.
Q. When did he go aboard of her?
A. In Key West harbor.

By the COURT:

Q. About what time?
A. For good he went aboard of her on the day before Sampson's fleet sailed, I think the 20th of April, I am not sure about the date.

By Mr. HUGHES:

Q. How long did he remain on board of her?
A. He remained on board of her until the latter part of May.
Q. When did you leave her?
A. I left her in July, the latter part of July.
Q. And except for brief intervals you were on her continuously from about the 2d of April to the last of July?
A. Yes, sir.

By the COURT:

Q. And Chamberlin was not on her until after the middle of May?
A. Until after the middle of June.

By Mr. HUGHES:

Q. Who detailed you to go on board the *Kanapaha?*
A. Mr. Lord.
Q. And when?
104 A. It was two days before she sailed I think. I was first detailed to go on another ship which we didn't charter.
Q. Then the latter part of March, the 29th or 30th of March, you were told to get ready to go on the *Kanapaha?*
A. I wasn't told to get ready to go on the *Kanapaha*, I was told to get ready to go south on a ship.
Q. To report for the Sun?
A. That wasn't said. Of course that was understood.
Q. You were in the regular employ of the Sun at that time?
A. Yes.
Q. I understand when you left New York there was no other reporter of the Sun on board?
A. No other.
Q. Did you give directions to Capt. Packard where to go?
A. I told him to go to Key West. I beg your pardon, I did not, he was told by some other person to go to Key West.
Q. Do you know who told him to go to Key West?

Mr. BARTLETT: Don't answer unless you know.

A. I don't know.
Q. Did you go to Key West direct?
A. With two stops for supplies.
Q. Where did you stop?
A. We stopped at—we got into a gale and went into some little town in Carolina, I have forgotten where, and then we went to Charleston.
Q. Did you direct the captain to go to Charleston?
A. No, sir, I did not.
Q. Do you know who did?
A. He was sailing master and he took the ship.
Q. Where did you go from Key West?
A. From Key West we went to the north coast of Cuba.
Q. Who was on board, what reporter of the Sun, besides yourself at that time?
A. Mr. John R. Spears.
Q. Who directed the movements of the yacht after Mr. Spears came on board?
A. Mr. Spears.
Q. And the captain went from place to place in accordance with Mr. Spears' instructions?
A. Yes, sir.
105 Q. You didn't give any directions in regard to the boat?
A. Except as I carried them from Mr. Spears to the captain.
Q. You did that frequently?
A. Yes, sir.

Q. Was Mr. Spears away from the boat any of this time?

A.-Whenever we touched port he was away but never for any length of time.

Q. Did you give any directions in his absence as to the movements of the yacht?

A. At that time he wasn't absent when the yacht was doing anything.

Q. Did you at any time give direction as to the movements of the yacht in his absence?

A. I did after Mr. Spears left the yacht.

Q. That was for what time?

A. The latter part of May.

Q. For how long a time did you give directions with regard to the places which the yacht should go to?

A. From the time we left Key West harbor until the time Mr. Chamberlin came aboard.

Q. That was from the latter part of May——

A. Until the middle of June.

Q. Was there anybody else on board the yacht who gave directions as to what places she should go to except yourself during that time?

A. No, sir.

Q. You were in correspondence with the Sun during this period you were on the yacht, were you not?

A. Yes, sir.

Q. Both by letter and wire?

A. Yes, sir.

Q. And continuously I suppose day by day sending reports?

A. Continuously as we could, yes, sir.

Q. And you watched the movements of the fleet?

A. Yes, sir.

Q. And cruised about to get information for the Sun relative to the Cuban insurrection prior to the outbreak of the war and in regard to the progress of the war?

A. Never attempted to get any information in regard to the Cuban insurrection, simply in regard to what the United States forces were doing there.

Q. I mean prior to the declaration of war you were watch-
106 ing affairs there?

A. Prior to the declaration of the war we were in Key West watching the preparations of the United States troops.

Q. And reporting to the Sun?

A. Yes, sir.

Q. You were there for that purpose, I suppose?

A. Yes, sir.

Q. Were the reporters of any other newspapers on the yacht *Kanapaha* during the time you were on her?

A. Yes, sir.

Q. What papers were represented?

A. The New York Press, the Scribbs and McRae.

By the COURT:

Q. What is that?
A. That is a news association that owns several newspapers.
Q. They had a reporter, each one of these?
A. Yes, sir, and the Harper's Weekly.

By Mr. HUGHES:

Q. Who else?
A. And that is all I think.
Q. What was the name of the man from Harper's Weekly?
A. Carleton T. Chapman.
Q. He was an artist, was he not?
A. Yes, sir.
Q. Was he on all the time you were?
A. Yes, sir.
Q. Went from New York with you?
A. No, sir, he was not, he joined us in Key West.
Q. At the same time Mr. Spears came on?
A. Yes, sir.

By the COURT:

Q. Did you leave him on board when you left?
A. Yes, sir, when I left the ship.

By Mr. HUGHES:

Q. Scribbs and McRae had whom on board?
A. At various times there were various men there. When we started out Mr. Rickey was the reporter, and——
Q. Rickey?
A. Rickey. And afterwards there was a man named Steep, there were others at various times whose names I didn't know.
Q. And the reporter of the New York Press was ——
A. Mr. Henry Tholens.
107 Q. Was he on all the time you were there?
A. Yes, sir.
Q. Did you have anything to do with the payment of expenses of the ship?
A. Yes, sir.
Q. Did you advance any money to Captain Packard, or pay any money to him?
A. I don't remember about Captain Packard, I don't think that I did. Mr. Spears was in charge of the ship the entire time that Captain Packard—that is I did in Charleston, I advanced money to Captain Packard, and also in another port we touched at before Mr. Spears came on.
Q. Before Mr. Spears came did you advance to Captain Packard on account of his wages?
A. No, sir.
Q. On account of what?
A. On account of the expenses of the ship.

Q. Do you know how Captain Packard got his wages during that time?

A. I do not.

Q. Do you know whether they were subsequently paid by Mr. Spears?

A. I do not.

Q. You advanced the money for the expenses of the ship and got the money from the Sun I suppose?

A. Yes, sir.

Q. Made up your accounts and sent in your vouchers?

A. Yes, sir.

Q. To whom did you address your reports and correspondence?

A. The Sun, New York.

Q. Always that address?

A. Yes, sir.

Q. Was Acton Davies on the boat at all while you were there?

A. No, sir.

Q. You don't remember him?

A. I was on the boat—only at intervals he used to come aboard and call on us.

Q. He wasn't detailed to go on board?

A. No, sir.

Q. He was a reporter of the Sun?

A. On the Evening Sun, yes, sir.

Q. When were you first instructed to get ready to go south to observe the movements of the United States forces?

108 Mr. BARTLETT: We have wasted half an hour in proving facts that are entirely immaterial. What difference does that make?

The COURT: Why not go into these details?

Q. To whom did you send your bills?

A. My personal expenses were paid by money which was advanced to me before I left and the bills of the ship were paid by drafts.

Q. Drafts drawn on the Sun?

A. Drafts drawn on the Sun.

Q. You rendered an account for all money furnished you to the Sun?

A. I rendered an account for as much as I was able to but a great many of my bills went down and were lost.

Q. You accounted to the Sun?

A. I accounted to the Sun.

Q. And to nobody else?

Objected to.

Q. When did you first receive instructions as to going south to observe the movements of the forces of the United States for the purpose of correspondence with the Sun on its behalf?

Objected to as irrelevant and immaterial. Objection sustained. Libellant excepts.

No cross-examination.

Mr. HUGHES: We offer in evidence the deposition of Harry Gasper, a witness for libellant examined *de bene esse*.

Objected to.

The COURT: Then you must prove his inability to be present.

109 EDWARD I. WOLFE, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. What is your occupation?
A. Law clerk.
Q. For whom?
A. Zabriskie, Burrill & Murray.
Q. Do you know Harry Gasper?
A. Yes, sir.
Q. Have you seen him recently?
A. I saw him yesterday morning.
Q. Where did you see him?
A. At No. 5 Hamilton avenue, Brooklyn.
Q. Where was he?
A. He was ill in bed.
Q. Was he unable to leave the bed?
A. He said he was.

Mr. HUGHES: We offer to read in evidence the deposition.

Mr. BARTLETT: We object.

By Mr. BARTLETT:

Q. Are you a physician?
A. No, sir.
Q. Are you a surgeon?
A. No, sir.

Mr. BARTLETT: I don't think he knows anything about it.

By the COURT:

Q. Did you go there for the purpose of subpœnaing him?
A. No, sir.
Q. What led you to his room?
A. I was sent over to see whether he could appear, to see whether he was in town or not.
Q. What time of day was it that you were there?
A. It was about quarter past ten in the morning.
Q. He told you he was sick, did he?
A. Yes, sir; he said he had been ill for about a week.

The COURT: Isn't that reasonably satisfactory, Mr. Bartlett?

110 Mr. BARTLETT: I am willing to admit the deposition subject to all objections as appear in the deposition itself.

Mr. HUGHES: You take my statement as to Petersen and Gasper, Mr. Bartlett, and I will take your statement as to Atkinson.

Mr. BARTLETT: We offer in evidence now the deposition of Stephen B. Atkinson.

HARRY GASPAR, called as a witness on behalf of the libellant, being duly sworn, testified as follows:

By Mr. HUGHES:

Q. What is your occupation, Mr. Gaspar?
A. Assistant engineer.
Q. Where are you employed at present?
A. I have not worked for a week; last one on the steamship *Winifred.*
Q. Were you ever employed upon the yacht *Kanapaha?*
A. Yes, sir.
Q. When?
A. I joined her the 18th day of May last.
Q. 1898?
A. Yes.
Q. Where did you join her?
A. Key West.
Q. Had you ever been on her before?
A. No, sir.
Q. Who were on the yacht when you joined her?
A. I couldn't name all hands.
Q. Who was the captain?
A. Capt. Packard.
Q. Who was the mate?
A. Mr. Seaman.
Q. In what capacity were you employed?
A. I was employed as an oiler.
Q. Who was the engineer?
A. Mr. Davis, chief engineer.
Q. At the time you went on the yacht were there any persons on board other than the crew?
A. Yes, sir; newspaper men, I suppose.
Q. Who were they?
A. I couldn't name only one; that was Mr. Speers.
111 Q. Remember seeing Mr. Anderson?
A. Yes, sir.
Q. Remember seeing Mr. Chamberlin?
A. Yes, but not at that time.
Q. Did you remain on the yacht for some time after you joined her?
A. Yes.
Q. How long?
A. Up until she ran ashore, when we lost her.
Q. When was that?
A. 5th of September, 1898.
Q. Did you remain on the yacht continuously during that time?
A. Yes, sir.
Q. Where did she go from Key West when you boarded her?
A. She made a run across and around the coast, around Havana to the eastward and westward among the fleet and then back again to Key West.

Q. Did she put in Key West frequently?
A. Only once while I was on her.
Q. Do you remember being off Santiago?
A. Yes, sir.
Q. Remember the sinking of the *Merrimac?*
A. I remember it, but I couldn't give you the date.
Q. Do you remember where the yacht was at that time?
A. No.
Q. Do you remember the yacht's going to Kingston, Jamaica, with the report of the sinking of the *Merrimac?*
A. Yes.

Mr. BARTLETT: I move to strike out that answer, the question suggesting an answer to the witness and assuming a fact not proved.

The WITNESS: I only know we went to Kingston; that is all.

Q. You remember going to Kingston shortly after the sinking of the *Merrimac?*
A. Yes, sir.
Q. Do you know what sort of weather your had on your way to Kingston that time?
A. I do not know; have made too many trips; can't tell about that.
Q. How long was Capt. Packard captain after you went on the yacht?
A. One trip; one cruise back to Key West; he left at Key
112 West; after I joined her he made one trip and then he came back to Key West, and he was through then.
Q. Who became captain then?
A. Capt. Seaman.
Q. Did he remain captain until the loss of the yacht?
A. No, sir.
Q. How long did he remain captain?
A. Couldn't tell you the date at all.
Q. Who succeeded him?
A. Captain Atkinson.
Q. Where was Capt. Atkinson taken on?
A. I couldn't be positive where Capt. Atkinson came on board; but I know where Capt. Seaman left, that is all.
Q. How long before the loss of the yacht did Capt. Atkinson become captain, about how long?
A. Well, I should say two months; something like that; I couldn't say positively as to that.
Q. While you were on the yacht do you remember hearing any one giving instructions to the captain?
A. No, sir.
Q. Remember hearing any one say to the captain about where they should go, what port you should put in at?
A. I don't understand that hardly.
Q. (Question repeated.)
A. I can't understand that.

Q. What did Mr. Chamberlain do on the yacht?
A. He was in charge of the yacht, what we call head reporter; I don't know what they call them here.

Mr. BARTLETT: I move to strike out that answer as incompetent, improper, irrelevant and irresponsive, and not called for by the question.

Q. What did you see Mr. Chamberlain doing on the yacht?
A. I see him boarding the ships, returning agin.
Q. Going ashore and returning again?
A. Yes, sir.
Q. Do you remember hearing him talking with the captain?
A. Nothing more than he would to any one else; used to speak to all of us.
Q. Don't you remember hearing him tell the captain, where he wanted to go?
A. No, sir.
Q. You said a few moments ago that Mr. Chamberlain was in charge of the yacht; what did you mean by that?
113 A. He was supposed to be head man on it, what we called the head reporter; that is what we had amongst ourselves, what we would call boss.
Q. What did he do to indicate that he was boss?
A. He was the head man; if we wanted any money we used to go to him to get it.
Q. Did you go to Chamberlain for money?
A. I did once.
Q. What else did Mr. Chamberlain do besides giving money to show that he was the head man?
A. Nothing in our department whatever.
Q. What did you see him do in other departments? What did you observe?
A. I never observed him doing anything. In our department he has come and say, "Hurry up a little, boys; hurry up a little."
Q. Where did you hear Mr. Chamberlain say "Hurry up"?
A. In the engine-room.
Q. Giving orders to the engineer or to you?
A. He said, "Hurry up, I want to make time," or something like that.
Q. Did you hear him say anything to anybody else on the boat in regard to it?
A. No, sir.
Q. What was the speed of the boat?
A. All we can get.
Q. What did you get?
A. Sometimes ten and sometimes twelve.
Q. How long had Chamberlain been on board before the boat was lost? I mean how long a time had he been on the yacht?
A. I couldn't say about that; I should judge about two months, something like that.

Q. I think that you said that Mr. Speers was on part of the time that you were there?
A. Yes.
Q. How long was he on?
A. One trip only.
Q. What did you see Speers do?
A. See him doing nothing.
Q. He did something while he was on board that you observed?
A. No, sir; nothing in my line of business; what he done on deck I know nothing about.
Q. Did you see anybody on the boat besides Anderson, Speers and Chamberlain, outside of the crew? Were there others there?
A. Oh, yes; seen others.
114 Q. I mean who were on the boat for some little time, several days or weeks?
A. I never see them there for weeks; I see different men there every day, five or six, or a dozen perhaps.
Q. Who were on the yacht when you were off cruising? There were some men on the yacht besides the crew and besides Anderson, Chamberlain and Speers, weren't there?
A. Sometimes one and sometimes two.
Q. Do you remember some of their names?
A. No, sir.
Q. Were they newspaper men?
A. Supposed to be, for all I know; we all thought they were.
Q. Were you paid after the loss of the yacht for your services?
A. What do you mean by that?
Q. You got some money, didn't you, for your services?
A. I received my pay up to the date she was lost.
Q. Where did you get it?
A. In the Sun office.
Q. In New York city?
A. Yes, sir.
Q. You mean in the office of the Sun newspaper?
A. Yes.
Q. When were you paid?
A. I am not positive as to the date, but I think the first of October, 1898.
Q. Whom did you see at the Sun office?
A. Mr. Chamberlain.
Q. The same Mr. Chamberlain who was on the yacht?
A. Yes, sir.
Q. Did he pay you?
A. Yes, sir.
Q. And you were paid for the wages which you had earned on the yacht?
A. Yes.
Q. At this time that you went to the Sun office?
A. Yes, sir.
Q. You remember the time of the accident—I believe you have given the date, September 5, 1898?

A. Yes, sir.
Q. Were you on duty at that time?
A. No, sir.
Q. Where were you at that time?
A. I was in my room lying down.
Q. How long had you been off duty before the accident?
A. Probably twenty minutes, something like that.
115 Q. What was the time of the accident?
A. Twelve minutes to eight.
Q. In the evening?
A. Yes, sir.
Q. Where had you been up to within twenty minutes before the accident?
A. Working around deck, standing around deck.
Q. What had been the weather that day?
A. Very good weather indeed.
Q. Clear?
A. Clear weather.
Q. What had been the condition of the sea that day?
A. Smooth.
Q. What was the condition of the sea at the time of the accident?
A. Smooth sea, calm sea, very smooth.
Q. How was the wind?
A. The wind was aft, what little there was.
Q. Was there much of a wind?
A. Very little.
Q. At the time of the accident very little wind and for some time before that very little wind?
A. Very little wind all that day.
Q. What course had the yacht been taking just prior to the accident?
A. Don't know.
Q. What course?
A. I don't know nothing about courses; that is out of my line of business.
Q. Had you seen the land that day?
A. Yes, sir.
Q. When did you see land first that day?
A. We see it very nearly all day, since some time early in the morning.
Q. Did you keep in sight of land all day?
A. Yes, sir.
Q. And were you in sight of land at the time of the accident?
A. Yes, sir.
Q. How far off shore were you?
A. Well, I should judge two and a half miles.
Q. And how long had you been two and a half miles off shore?
A. I couldn't say. The last time I noticed the land, the last time I looked before dark was six, we were somewhere about three and a half miles then.

Q. At six o'clock on the same evening?
A. Yes.
116 Q. And the land was on which side of you?
A. On the port side.
Q. Where had you come from?
A. Cape Hayti.
Q. Had you anchored at Cape Hayti?
A. Yes, sir.
Q. Had you made any other landing since leaving Cape Hayti?
A. No, sir.
Q. Where were you bound for?
A. Havana.
Q. Through what channel?
A. Bahama channel.
Q. You say that there was an accident; what was the accident? We have been talking about an accident to the boat, what was it? Did the boat run on a reef?
A. Sure.
Q. Ran ashore?
A. Yes, sir.
Q. What speed was she making about the time of the accident?
A. Eleven and a half and twelve knots.
Q. What speed had you been making through that afternoon?
A. About the same speed.
Q. Do you remember about what time the sun set that evening?
A. No, I do not.
Q. What sort of an evening was it?
A. Very nice evening.
Q. Clear?
A. Clear evening.
Q. You remember the point called Gibara?
A. Yes.
Q. Did you notice that when you passed?
A. Yes.
Q. About what time did you pass Gibara?
A. Between two and three o'clock.
Q. In the afternoon?
A. Yes, sir.
Q. Do you know how far Gibara was from Pt. Neuvitas?
A. I have an idea.
Q. What is your best idea?
A. My idea is about sixty miles.
Q. How near were you to Neuvitas at the time of the accident?
A. What do you mean—off Neuvitas harbor, the mouth of the harbor, or the city?
Q. The mouth of the harbor.
A. About six miles, I guess.
Q. In what direction did that lay from you?
A. Easterly direction; I couldn't say whether it was east.
Q. That is, the yacht was about six miles east of the harbor?
A. Yes, sir.

117 Q. Explain what occurred at the time of the accident, what you did, and what you saw others do?

A. I had my own troubles to look after, what I done myself.

Q. What did you do?

A. Went up and pulled my clothes on, and walked through in the engine-room, started the pump, that is, I see it was started, and remained there in charge of the engine-room while the chief went into his room to see to some of his affairs.

Q. How long did you remain in the engine-room?

A. It might have been half an hour.

Q. Where did you go then?

A. On deck.

Q. What did you do on deck?

A. I had nothing to do on deck.

Q. How long did you stay on deck?

A. I was up and down from there to the engine-room until we left, until the time we left.

Q. Did you see how far you were from land?

A. I couldn't tell how far; I couldn't see the land; I couldn't tell how far.

Q. You could see the land over on the port side, couldn't you?

A. Yes.

Q. You remained on deck for some time?

A. Yes, up and down from the time we went ashore until we left.

Q. When did you leave the yacht?

A. Twenty minutes past twelve.

Q. On the same night?

A. Yes, sir.

Q. All hands leave her at that time?

A. Yes, sir.

Q. Where did you go?

A. Went aboard the steamship *Albus*.

Q. Where did this steamer take you?

A. To Neuvitas.

Q. Did you go back to the place of the accident after that?

A. Yes, sir.

Q. How long after?

A. The third day.

Q. What did you observe at that time?

A. The ship was full of water then, that was all.

Q. Was she pounding?

A. A ship can't pound after it is full of water and on a reef.

118 Q. What did you observe about the reef? Did you see the reef and the water breaking over it?

A. Not on that day. We started on the first day after to go down; we couldn't get down.

Q. Why not?

A. Too rough. The sea was breaking over the reef.

Q. How far did you go that day?

A. We got down to within half a mile of the boat.

Q. And you saw the reef from there?

A. See it was breaking, and you couldn't get across it.
Q. Did you see the water breaking over the reef to the east of where the vessel was?
A. Yes, sir, all along.
Q. Over on the east side of where the vessel was?
A. From the eastward to the westward, both ways.
Q. I show you a chart——

Mr. BARTLETT: I object to the chart being shown the witness; the chart is not in evidence, not duly proven and not properly authenticated.

Q. I call your attention to it, and to the point marked Neuvitas del Principe; is that the Neuvitas point that you have mentioned?

Objected to as incompetent, immaterial and irrelevant.
The WITNESS: That chart is not like anything I have seen before.
Mr. HUGHES: I move to strike that out as irresponsive.

Q. I call your attention to this point, Point Neuvitas; is that the point that you have referred to as Point Neuvitas?
A. I can't tell from that chart.
Q. You say this first day; that was the first day after the accident when it was too rough to get all the way to the yacht?
A. Yes, sir.
Q. And you got how near, do you say?
A. Probably three-quarters of a mile, half a mile.
Q. Then you went back?
A. Yes, sir.
Q. Did you go out again the next day?
A. The boats went out; I didn't go myself.
119 Q. You went there the third day?
A. Yes, sir.
Q. That is the day you found the boat full of water?
A. Yes, sir.
Q. Where was she lying?
A. The same position as when she struck.
Q. Do you remember how the reef ran as compared with the shore, whether it wasn't at some angle with the shore?
A. It was an angle with the shore; I couldn't tell what angle.
Q. Was it an acute angle, small angle?
A. It might off the shore. Say the shore ran here (indicating) and the reef ran like this (indicating).
Q. Nearly parallel, but something of an angle.
A. That is it.
Q. Do you know what was done with the vessel after that? The third day when you saw her, was anything done?
A. No, sir, not to my knowledge.
Q. Do you know if the captain and all hands left her?
A. Yes, sir.
Q. She was abandoned, wasn't she?
A. Yes, sir.
Q. As a total loss?

A. Yes, sir; to the best of my knowledge; I couldn't say what was done with her.
Q. Did you go back to Key West after that?
A. Went into Key West harbor.
Q. You went back on the *Albus*, didn't you?
A. Yes, sir.
Q. Did the captain go back with you?
A. Yes, sir.
Q. All hands?
A. All hands, yes, sir.
Q. You were down in the engine-room for some little time after the accident; was there any one there with you?
A. The firemen and oilers were up and down.
Q. Then you came up on deck?
A. Yes, sir.
Q. Did you see the captain up there?
A. Yes.
Q. Did you hear him say anything about the accident?
A. No, sir.
Q. Nothing at all?
A. No, sir.
Q. Hear him say anything about striking the reef?
A. No, sir.
Q. Nothing whatever?
A. No, sir.

120 Cross-examination by Mr. BARTLETT:

Q. Mr. Gaspar, are you friendly with Capt. Atkinson, on good terms with him?
A. Very good terms.
Q. Always have been?
A. Always have been, yes, sir.
Q. What time was it that you were last on deck before the accident occurred? You say the accident occurred about eight o'clock.
A. Twelve minutes to eight.
Q. How long before had you been on deck?
A. I had been below twenty minutes.
Q. And was the captain on deck when you went below?
A. Yes, sir.
Q. Where was he—on the bridge?
A. On the bridge.
Q. When you came up after the accident did you find him on the bridge?
A. I didn't come up; I went through into the engine-room.
Q. But the last you saw of him before the accident, and some twenty minutes before that, he was on the bridge attending to his duties?
A. Yes, sir.
Q. In command of the boat?
A. Yes, sir.
Q. Was he a good seaman?

Mr. HUGHES: I object to that as incompetent, immaterial and irrelevant, and calling for a conclusion of the witness. He is not an expert.

A. As far as his business goes I don't know; I am not a captain.

Q. You don't know?

A. No, sir. I considered he was, in my judgment.

Q. In your judgment he was a good seaman?

A. Yes, sir.

Mr. HUGHES: I move to strike out that question and answer as calling for an opinion of the witness, and as incompetent.

Q. You have sailed on a good many steam vessels with captains, haven't you?

A. Yes, sir.

Q. For how many years?

A. Fifteen or sixteen.

Q. Practically a good part of your life has been under the captains of steam vessels?

A. Yes.

121 Q. And you have seen a good many in command of steam vessels?

A. Yes, sir.

Q. And you know their duties in substance?

Objected to.

A. No, sir; I do not know the captain's duties.

Q. Was it dark when the accident occurred?

A. Yes, sir.

Q. Were there any lights along the coast?

A. Hadn't seen any.

Q. Hadn't seen any lights along the coast?

A. No, sir.

Q. Was there anything to indicate the presence of the reef above the surface of the water?

A. No, sir.

Q. The reef was concealed?

A. Yes, sir.

Q. And it was some two miles and a half from the shore?

A. Yes, sir.

Q. And there was no buoy or anything to indicate the presence of a dangerous rock?

A. No, sir.

Q. And there was nothing on the coast by way of light or lighthouse or buoy or light vessel of any kind to indicate the presence of a reef or rock?

A. No, sir.

Q. The lights all along the coast had been removed, hadn't they?

Objected to.

A. I don't know all along the coast, but them two lights was out.

Q. What two lights do you refer to?
A. The Neuvitas Point pilot, or something like that.
Q. Up against Neuvitas harbor there should have been two lights?
A. Yes, sir.
Q. And there were two light-houses?
A. One light-house, and another light that they hauled up on a pole.
Q. Just tell us all you know about that; where was the light-house?
A. The light-house is on the starboard side going out.
Q. Right on the point of the harbor?
A. Yes, sir.
Q. On the starboard side?
A. Yes, sir.
Q. That is, a light-house used to be there?
A. Yes.
122 Q. And then on the other side of the harbor?
A. On the port side there is a light that they have to haul up on a pole.
Q. And on that night both of those lights were out?
A. Yes.
Q. There was no light in the light-house and no light on the pole?
A. No, sir.
Q. And was this reef off against Neuvitas harbor?
A. To the eastward.
Q. About due east?
A. I couldn't say about east, but I know it lay in an easterly direction from Neuvitas harbor.
Q. So that the lights would have been visible from the reef or from the point where the yacht struck if they had been burning?

Mr. HUGHES: Objected to as incompetent, calling for an opinion without a proper basis for it.

A. Yes, sir.
Q. When are you going away?
A. I don't know.
Q. Have you an engagement whatever to sail?
A. Last week I was sick all the week, and I was sent for three times. I may have a letter when I go over to the house tonight to come and go to work.
Q. But yesterday you had no engagement to go out?
A. No, sir.
Q. You hadn't been engaged to sail?
A. No, sir.
Q. And you don't know of any fixed engagement now?
A. Nothing fixed.
Q. How did they come to get you to testify here? Do you know how they got hold of you?
A. Certainly I know.
Q. Tell us all about it?
A. You see that Dutchman that was in here?

Q. The Swede?
A. Yes.
Q. Olaf Petersen?
A. Yes. He knew me and he happened to meet me in Hamilton avenue, in Brooklyn, the other night; and he had been over
123 here and some one asked him if he knew any one who was on the yacht the time she was lost, and he told him that he see the fellow that was first assistant, and he said bring him over, and he came and asked me if I would come over; I don't know who it was that asked him.
Q. Then you had not seen the lawyer, Mr. Murray?
A. I have seen him before.
Q. When?
A. Friday.
Q. Where?
A. Down at the office.
Q. And did you tell him then that you were engaged to leave town?
A. I told him I expected to go at any time; I couldn't tell him what time I would go.
Q. That was a sort of an indefinite engagement?
A. The same as I have now.
Q. That is, you will go when you can?
A. That is most any time I get ready.
Q. Now, who was the first engineer; the chief en-eer?
A. Frank Davis.
Q. Where is he?
A. At present employed in Luckenbacks Company, down in Broadway.
Q. Then he is in the city?
A. No, sir; he might be here one week and might not be here in three; an outside boat that tows from Norfolk to Boston.
Q. The towing company?
A. Yes, sir.
Q. And do you know any other men who were there with you?
A. At the time of the accident?
Q. Yes.
A. I know. Where they are, I don't know.
Q. Where do you live when you are here or in Brooklyn?
A. I sometimes stop in New York, sometimes in Jersey and sometimes in Brooklyn, but my address at any time is either 18 Broadway, care of Morse & Company, or No. 7 Hamilton avenue Brooklyn.
Q. The best average speed you could get out of this boat was 10 knots?
A. What do you mean by average? 24 hours?
Q. Running along for 24 hours.
A. That is about right, I guess.
Q. Were her engines in good order?
A. That is a question I can't answer.

124 Q. Well, you are an engineer?

A. Certainly. They might be in order to suit some, but they didn't suit me.

Q. That is what I want; your opinion.

A. In my opinion they would not suit me.

Q. How long have you been in this profession of engineer; some 15 years?

A. No, sir; I have been in steam vessels for that, but I have held an engineer's certificate for this is my seventh issue. It will be 8 years this coming June.

Q. How as to the boilers; the same thing? They wouldn't suit you?

A. No, sir.

Q. They were not first class, were they?

A. They was first class.

Q. Originally?

A. They was first class when I first joined the boat.

Q. But not afterwards?

A. No, sir.

Q. How big a reef was this upon which the yacht struck?

A. I couldn't say; it might be four miles or it might be six miles long; something like that; maybe more.

Q. It was a long reef?

A. Sure, it went off a long way along the coast.

By Mr. MURRAY:

Q. Six miles eastward of the vessel?

A. I couldn't say. I am just giving you my judgment. It might be six miles long, the whole length of it; it might be more or might be less.

By Mr. BARTLETT:

Q. Did you ever examine it carefully?

A. No, sir; I never did. I never expected to be questioned about it and never thought I would think about it any more.

Q. So you don't know?

A. No, sir.

Q. All you know is there was a reef upon which the yacht struck?

A. Yes, sir.

Q. You have stated originally that you did not know the direction in which the yacht was going. That is, the exact pointing of the yacht at the time of the accident?

A. That is, the exact course, you mean?

125 Q. Yes.

A. No, sir; I do not know.

By Mr. MURRAY:

Q. Coming down to the time of the accident, had you been expecting to see these lights before you struck?

Objected to as incompetent, improper, irrelevant and immaterial.

A. We were expecting to make a light. We didn't know but thought we ought to make the light.

Q. How long had you thought that before the accident?

Objected to as incompetent, improper, immaterial and irrelevant.

A. I was at that time thinking we ought to make them when they was lit at dark.

By Mr. HUGHES:

Q. As I understand it, you are going to sea just as soon as you can get a place?

A. If I am well enough to go I would have gone last week. I may go in a day or I may not go in two weeks.

Q. You will go just as soon as you are well enough and get a place?

A. Yes, sir.

Q. And have you been expecting to go on the boat which was about to come in from Boston?

A. Yes, sir.

Q. When is that boat expected to come in?

A. I could not say for that.

Q. Where is it expected that that boat will come—by you?

A. She may come to Erie basin, may come to Fletcher's, and may come to 9th street.

Q. Then will be bound for where?

A. Porto Rico.

Q. Have you had conversations with the captain of that boat?

A. No, sir; not lately.

Q. Well, I mean a little time ago?

A. He told a man to come and tell me. I didn't see the captain myself.

Q. You have got word about this vessel coming in?

A. Yes, sir.

Q. And you told Mr. Murray about that?

A. Yes, sir.

126 Q. What did you tell him?

A. I don't know now. I told him I expected to go away.

Q. On that boat?

A. Yes, sir; that was my expectation.

Q. You still expect to, don't you?

A. Yes, sir.

Q. As soon as she comes in?

A. If I am well enough, yes.

Q. And she is expected in now very shortly?

A. May be here today, and may be in three days, I don't know. The captain has gone after her.

Q. This gentleman who has been assisting Col. Bartlett, do you recognize him?

A. Which one?

Q. The gentleman with glasses.

A. No, sir.

Q. Who is the other gentleman?
A. Mr. Chamberlain.
Q. The Mr. Chamberlain that you have mentioned as being on the yacht *Kanapaha?*
A. Yes, sir.
Q. And who paid you at the Sun office?
A. Yes, sir.
Q. How did the coast look when you were on deck after you had struck that night; was it somewhat high?
A. Well, it was like all the Cuban coast down there; highland back, low on the coast.
Q. High near the coast?
A. No; high back from the coast.
Q. You could see it rising?
A. Yes, you could see it.
Q. And as I understand it, the day that you came out, the next day when you tried to make the boat, you could see the reef distinctly; water breaking over it?
A. Yes, sir.
Q. And I understand that for some time before the accident you had been looking for these lights at the mouth of the harbor?
A. I hadn't been looking for them.
Q. I don't mean personally, but you had been expecting to make them?

Objected to.
Question withdrawn.

By Mr. BARTLETT:

127 Q. The next day when you came out you saw the water breaking over the reef. You did not see the reef itself, did you?
A. You can't see the reef at all.

By Mr. HUGHES:

Q. You saw the water breaking over it?
A. I could see the sea breaking over the reef.
Q. You have seen reefs, haven't you, and you know the way water breaks over reefs, and so it was perfectly evident there was a reef there when you came out the next day, wasn't it?
A. There was a reef there all right. You couldn't lose that on the map.

128 United States District Court, Southern District of New York.

WILLIAM L. MOORE, Libellant,
vs.
THE "SUN" PRINTING AND PUBLISHING ASSOCIATION, Respondent.

NEW YORK, *March* 30, 1899.

Before Thomas Alexander, Esq., United States commissioner.

Appearances.

For the libellant, Chas. E. Hughes and Archibald Murray.
For the respondent, Franklin Bartlett.

Deposition of Capt. Stephen B. Atkinson, taken on behalf of the respondent, by consent, with the same force and effect as though taken by order of the court.

STEPHEN B. ATKINSON, called as a witness on behalf of the respondent, being duly sworn, testified as follows:

By Mr. BARTLETT:

Q. Capt. Atkinson, what is your business or occupation?
A. Master mariner.
Q. How old are you?
A. 59 years old.
129 Q. How long have you been engaged in your present occupation? How long have you been occupied either as a master or in connection with seafaring?
A. 40 years.
Q. Been a seafaring man for 40 years?
A. Yes.
Q. How long have you been a master man?
A. 25 years.
Q. When did you arrive in New York this time?
A. Monday—last Monday.
Q. Are you about to leave New York today?
A. I leave New York this evening on the Fall River boat.
Q. And you do not know when you will return?
A. No.
Q. Do you know the yacht *Kanapaha?*
A. Yes, sir.
Q. Were you on the yacht *Kanapaha* in the summer and autumn of 1898?
A. Yes, sir.
Q. In what capacity?
A. Master.
Q. How long were you master of the yacht *Kanapaha*, approximately?
A. Well, I don't remember the dates exactly; but I took charge of her some time in June, and I think I lost her on the 5th of September. I left New York on the 2nd of June, I think.

Q. How were you engaged as master of the *Kanapaha?* What did you first know about it? Did you receive a communication from any one?

A. From Mr. Manning, of a yacht broker's office.

Q. From Mr. Thomas Manning?

A. Yes, through that office.

Q. You received a written communication?

A. I received a telegraphic communication from the office.

Q. And you went to Mr. Manning's office?

A. No; I was met by one of Mr. Manning's clerks on the street in New York.

Q. Some time in June, 1898?

A. Some time in June, 1898.

Q. And then thereafter did you go to Key West?

A. I took the train the next morning from here direct to Key West.

Q. And when did you take command of the yacht?

A. I don't remember the exact date.

Q. Shortly thereafter?

130 A. Some time in June; I think it was the 4th or 5th. I went from New York direct to Key West; then I took passage from Key West to Santiago.

Q. Where did you take command of the yacht?

A. In Guantanamo bay or Santiago.

Q. This yacht was built of iron?

A. Yes.

Q. What was her tonnage? You can look at your report.

A. About 123 tons, or somewhere in that neighborhood, net. I think (looking at paper) it is 123 tons down here. I don't keep those things in my head at all.

Q. What did you do after you took command of the boat?

A. Well, I carried out the instructions of my employer.

Q. I would draw your attention to the early part of September, 1898.

A. We were lying at Ponce in Porto Rico; I received orders from my manager to proceed to Havana.

Q. Was that about the 2nd of September?

A. Yes, 2nd—no, it would be a little previous to that.

Q. When did you leave Ponce?

A. We grounded on the 5th; we must have left either the 30th or the 1st; I am not sure of those dates at all.

Q. Somewhere about the 1st of September, 1898?

A. Yes.

Q. Left Ponce bound for Havana?

A. Yes, sir.

Q. What was your course? Where did you go?

A. I proceeded direct from Ponce.

Q. When did you pass Cape Haytien?

A. We coaled at the port of Cape Haytien.

Q. When was that?

A. I think that would be on the 3rd of September; I am not

certain whether we left on the morning of the 4th or the evening of the 3rd—it would be the evening of the 3rd.

Q. When did you pass Cape Rebecca?

A. We passed Rebecca about noon of the 5th.

Q. What was your course after leaving Cape Rebecca?

A. I don't remember the exact courses now, but you will find them in my report made and delivered at New Orleans.

131 Q. Is this your report (showing witness a paper)?

A. No, sir.

Q. Is it a copy of your report?

A. This seems to be only an abstract of the report; there is no copy here of the report.

Q. What took place on the 5th day of September, 1898?

A. On the 5th day of September, about 7.30 or 7.45—I don't remember the exact time—we grounded about seven miles east of Nuevitas, the north side of Cuba; very dark at the time; sea smooth.

Q. Were you on deck at the time?

A. Yes, sir; not on the bridge exactly at the time, but had just left the bridge a minute or two before; and I was in the pilot-house right under the bridge at the time she struck.

Q. Was the vessel proceeding at her usual course of speed?

A. Yes, about twelve knots, the usual speed.

Q. Was the usual lookout on the boat?

A. Yes.

Q. Where was the lookout?

A. A man was forward, and a man at the wheel, and an officer on the bridge.

Q. The usual lookout?

A. Yes.

Q. At the time of the grounding did you think that your course was safe?

Mr. HUGHES: That I object to as incompetent and irrelevant, calling for the opinion of the witness and leading.

Q. Do you think your course was safe or not?

Same objections.

A. I had no doubt of it.

Mr. HUGHES: I move to strike out the answer of the witness on the same grounds.

Q. You supposed your course was safe?

Mr. HUGHES: Same objections—incompetent and irrelevant, calling for an opinion of the witness, and leading.

A. I certainly supposed my course was safe, or I shouldn't have steered it.

132 Mr. HUGHES: I move to strike out the answer on the same grounds.

Q. Why did you think your course was safe?

Mr. HUGHES: Same objection—incompetent and irrelevant, and calling for a conclusion of the witness. The question should be directed as to matters of fact.

A. My reasons for thinking my course was safe, that I had passed Cape Rebecca about six miles distant, that I had laid the course to carry me into the old Bahama channel in safety, and I was running this course, and I had no reason to believe that anything was wrong, knowing that the compasses were correct.

Q. You say you had passed Cape Rebecca—how long before?

A. About six miles distant; some time in the early part of the day.

Q. You mean by "six miles distant," six miles distant from Cape Rebecca?

A. From Cape Rebecca.

Q. When the vessel stranded?

A. My supposed position would be six miles—my position, according to my reckoning, would be six miles distant from Matternilis point.

Mr. HUGHES: I move to strike out the statement of the witness as to his supposed position at the time of grounding, on the ground that it is incompetent and irrelevant.

Q. When you were off Cape Rebecca how far were you from shore?

A. Six miles, in my judgment.

Q. How far was Cape Rebecca from the point where you stranded, about?

A. I don't remember.

Q. You passed it early in the day?

A. Yes.

Q. You passed Cape Rebecca early in the day?

A. Yes.

Q. And you had been steaming at about what rate of speed?

A. About twelve knots.

Q. What did you do about directing your course after you passed Cape Rebecca?

133 A. I had nothing, only revised my course from time to time to carry me into the old Bahama channel.

Q. And about how far from shore?

A. My course would put me six miles off Matternilis Point reef.

Mr. HUGHES: I move to strike out his answer as to what his course should be, on the ground that it is incompetent and irrelevant; the question should be as to the exact position of the boat.

The WITNESS: I didn't answer exact position; I said supposed position of the boat.

Q. What was the cause of the stranding of the yacht *Kanapaha*?

Mr. HUGHES: I object to that as incompetent and irrelevant, calling for the opinion and conclusion of the witness, instead of making inquiry as to the facts.

A. I refer you to my report, handed to the local inspectors at New Orleans. My reasons for the stranding of the boat was, in the first place, an unknown current; in the second place, the non-lighting of the lights at Matternilis.

Q. At the light-house at the entrance to the harbor?

A. Not exactly at the entrance of the harbor; at Matternilis Point reef.

Mr. HUGHES: I move to strike out what the witness has said as to his reasons being an unknown current and a non-lighting of the lights.

Q. I will ask you the direct question: What were the causes of the stranding of the boat?

Mr. HUGHES: That I object to as incompetent and irrelevant, and calling for the opinion and conclusion of the witness as to the cause instead of the facts, so that the court can reach its own conclusion.

A. The causes in my opinion were, first, an unknown
134 current; second, the non-lighting of the light-house; and, third, an imperfect chart of the coast.

Mr. HUGHES: I move to strike out the answer of the witness on the same grounds.

Q. State what you know about the currents.

A. My chart gave no instructions as to currents at all.

Mr. HUGHES: I object to that as incompetent and irrelevant; the chart not being produced the witness' statement as to its contents not being competent.

The WITNESS: But from other sources I know there is a current.

Mr. HUGHES: I move to strike out the testimony of the witness, that from other sources he knows that there was a current, as hearsay and incompetent and irrelevant.

Q. Did you know prior to the stranding of the *Kanapaha* of any currents at the place where she run on the reef?

A. No, sir.

Q. Had you been informed prior to the stranding of any currents at that point?

Objected to as incompetent and irrelevant.

A. No, sir.

Q. State what you know about the failure of lights or of the light-house to be lit. Where was the light-house?

A. At Matternilis point, about two miles west of the entrance to Nuevitas, to the harbor of Nuevitas.

Q. Was the light lit on that night?

A. No, sir.

Q. What had you been informed—what had you learned concerning the lights on the Cuban coast before you left Ponce? What had you been informed?

Mr. HUGHES: That I object to as incompetent and irrelevant and calling for hearsay.

A. I had been informed that the lights on the north side of Cuba were all relit and were burning.

Mr. HUGHES: I move to strike out the answer on the same grounds.

135 Q. Who informed you?

Same objections.

A. The customs authorities in Ponce, Porto Rico, had instructions from New York.

Mr. HUGHES: I move to strike out the answer, that the customs authorities at Ponce had instructions from New York, as incompetent and irrelevant.

Q. And you were so informed by the customs authorities at Ponce, Porto Rico?

Objected to on the same grounds.

A. Yes, sir.

Q. If the light had been burning would the stranding have been avoided?

Mr. HUGHES: I object to that as hypothetical, and calling for the opinion of the witness, and as incompetent and irrelevant.

A. The stranding would have been avoided.

Mr. HUGHES: I move to strike out the answer on the same grounds.

The WITNESS: That is what lights are for.

Mr. HUGHES: I move to strike out the statement of the witness as not responsive.

Q. Was that a large light-house at this point?

A. Yes, sir.

Q. It could be seen how far at sea?

A. I think seventeen miles, seventeen or eighteen miles. I know that it could be seen from where I was at dark if it was lit.

Q. And at dark did you see any light?

A. I did not see it.

Q. Did you see any light at any time while you were along that coast?

A. I saw all the other lights excepting this along the coast. There are many.

136 Q. State the other lights which you saw burning on that night along the coast.

A. The only light I saw was at Cape Maysi. I saw some after leaving Nuevitas on the Norwegian steamer *Albus*.

Mr. HUGHES: I move to strike out the last part of the answer, as it refers evidently to a time after the occurrence in question.

The WITNESS: From my knowledge and the knowledge I gained

while I was there, this Matternilis Point light and the light what they call the Eastern Point light were the only two lights that were not exhibited on that night. The lamps had been destroyed by the Spaniards and our Government not knowing this had not furnished lights.

Mr. HUGHES: I move to strike out the answer as hearsay and incompetent and irrelevant.

Q. Tell us, Captain, what you know of your own knowledge about the condition of those two light-houses.

A. On the night in question I know of my own knowledge that the lamps had been destroyed by the Spanish soldiers and had not been replaced and relighted.

Q. Did you visit the light-houses?

A. Yes, on the Eastern point at the entrance to Nuevitas, on the following day. I was shown by the police the lamps that had been destroyed.

Mr. HUGHES: I move to strike out the statement of the witness as to the destruction of the lights that had belonged at this place, and as to the information given to him on the day after the accident from the persons whom he found at the light-house, as incompetent, irrelevant and immaterial, and as hearsay.

Q. And you were shown the broken lights there?

Objected to as leading and incompetent and irrelevant.

A. Yes, sir.

Q. Was the night dark at the time the vessel struck?

A. Very dark, yes.

137 Q. But no fog?

A. No fog.

Q. So that if a light had been burning it could have been readily seen?

Mr. HUGHES: That I object to as hypothetical, calling for an opinion of the witness, and incompetent and irrelevant.

A. It was a very fine night for seeing a light; the night was very dark, very fine.

Q. Were you familiar with that part of the coast?

A. Yes, sir; I had navigated that channel on several occasions previous to this.

Q. Did you always find those two lights burning before?

Objected to as incompetent and irrelevant.

A. Yes.

Q. What two lights do you refer to now?

A. I refer to the light at the entrance of Nuevitas harbor and the Matternilis Point light only about two miles to the westward.

Q. And those were the two lights which were not burning that night?

A. Yes.

Q. Was there anything to indicate the presence of the reef on that night?

A. Not anything.

Q. Was the water smooth?

A. Perfectly smooth. Had there been any sea on I would have seen the reef.

Q. How far was the reef from the shore?

A. Two miles.

Q. And the surface of the water was unbroken at the time?

A. Yes, sir.

Q. It appeared like a smooth sea?

A. As smooth as that floor there (pointing to floor of court-room).

Q. That is, the sea all around the reef?

A. Yes.

Q. Was there anything of any sort, any buoy or any light vessel to indicate to you the presence of the reef?

Mr. HUGHES: That I object to as leading. The witness should be asked what he saw.

Q. I want you to tell me what you actually saw. Was
138 there any light-house or any light-vessel or any buoy or anything of any sort on the surface of the water along the reef where the vessel struck?

Same objection.

A. There was nothing.

Q. The sea was smooth at the time?

A. Yes.

Q. And what way was the wind?

A. Northeast trade; light air from the northeast at the time.

Q. What chart did you have on board of the vessel? Was it a United States chart?

A. Yes; issued by the United States Government.

Q. And was it the latest chart issued by the United States Government?

A. I couldn't say as to that. It was a chart called the western section of Cuba, taking in nearly the whole island of Cuba, excepting a small piece on the eastern end.

Mr. HUGHES: I object to that upon the ground that the chart should be produced; the testimony of the witness is not the best evidence.

Q. Did the chart indicate the reef?

Same objection.

A. No, sir.

Q. In what direction was the boat pointed at the time of the accident?

A. Northwest or northwest by west.

Q. And you steered her right along the shore?

A. Yes.

Q. At a distance of about six miles along the shore?
A. The supposed distance.

Mr. HUGHES: I move to strike out that answer.

Q. How did you lay your course out after leaving Cape Rebecca?
A. The usual method.

Mr. HUGHES: I move to strike that out.

Q. What was the usual course?

A. You can find my course in my report issued in New
139 Orleans. I can't remember. It was somewhere northwest, or west-northwest by half west, or northwest by half west, or northwest by quarter west.

Q. How far from the shore would that have kept your boat?
A. Six miles.

Mr. HUGHES: I move to strike out his answer the distance that would have kept his boat from shore, as incompetent and irrelevant.

Q. Did you keep to that course as laid out by you?

Objected to.

A. All I have got to say is, that I was steering what I supposed to be a correct course for entering the old Bahama channel. If anybody doubts that I can't help it.

Mr. HUGHES: I move to strike out what the witness supposed to be the correct course as incompetent and irrelevant.

Q. Did you pass any vessel a short time before the *Kanapaha* struck?

Objected to as incompetent and irrelevant.

A. Yes; we passed a vessel in the afternoon steering pretty nearly the same course.

Mr. HUGHES: I move to strike out "steering pretty nearly the same course" as irresponsive, immaterial and irrelevant.

Q. What was the vessel which you passed?
A. The Norwegian steamer *Albus*, bound from New York to Nuevitas.
Q. What course was she steering when you saw her?

Objected to.

Q. What course was this Norwegian steamer steering when you passed her?

Objected to.

140 A. She was steering a course more westerly than I was steering, that is, more in shore from what I was steering.
Q. Did the *Albus* maintain that course?

Objected to as immaterial and irrelevant.

Q. Did she continue the same course after you passed her, or did she change it?

Same objections.

A. She changed her course after I passed her.
Q. In what way?
A. Continued to steer the same course that I was steering.
Q. That is off shore?
A. Yes; then she was following right in my wake at dark. She changed her course at six o'clock, when she was right at the stern of me, and changed her course to the same way I was going; in other words, she changed directly in my wake.

Mr. HUGHES: I move to strike out that answer as immaterial and irrelevant.

Q. At the time you passed her she had been steering more in shore?

Same objection.

A. Yes.
Q. After the *Kanapaha* struck did you see the *Albus?*

Objected to as immaterial and irrelevant.

A. Yes.
Q. How soon afterwards?

Same objection.

A. I saw her side lights right astern afterwards; she was about a mile astern of us.
Q. Did she approach you?
A. Yes.
Q. What happened then?
A. I put out a boat and pulled towards her.
Q. Did you go on the boat towards her?
141 A. Yes, for the purpose of warning them to change their course, and that we were ashore.

Mr. HUGHES: I move to strike out that answer as immaterial and irrelevant.

Q. Was the stranding of the *Kanapaha* in any way caused by any negligence on your part?

Mr. HUGHES: I object to that question as incompetent and immaterial, and calling for a conclusion on the part of the witness.

A. I didn't consider so at the time.

Mr. HUGHES: I move to strike out the last answer on the same grounds.

Q. Was it so or not?

Same objections.

A. No. I never knew a man who was willing to lose his vessel.

Q. Was the stranding of the *Kanapaha* caused by the negligence of any of the men under you or any of the employees on that boat?

Mr. HUGHES: I object to that as leading and as incompetent and irrelevant, and calling for a conclusion of and opinion of the witness.

A. No, sir.

Q. Were you familiar in 1898, and are you familiar now with the value of a steam yacht?

A. Yes, sir; I am fairly familiar with the value of steam yachts.

Q. You have seen a good many steam yachts?

A. I have been connected with steam yachts now for the last six or seven years.

Q. Have you just been in command of a steam yacht?

A. Yes, sir, the steam yacht *Eleanor*, formerly belonging of Mr. William A. Slater, of Norwich, Connecticut.

Q. Where did you leave her?

A. I left her in Nassau.

Q. She was sold by Mr. Slater to whom?

A. Mrs. Cardiza, of Germantown, Pennsylvania.

142 Mr. HUGHES: I object to this testimony as incompetent and irrelevant and improper, for the purpose of ascertaining the value of the yacht *Kanapaha*, and immaterial, and further as hearsay.

Q. For what sum was she sold?

Same objection.

A. About $125,000.

Q. What did she cost?

Same objections. Witness has not been shown familiar with its cost.

A. She cost about $300,000.

Q. She was a large boat, was she?

Same objections.

A. A boat of 800 tons gross.

Q. How old was this steam yacht *Kanapaha?*

Objected to as hearsay.

A. The records will show that. She is eighteen years old, about.

Q. Was there any electric-lighting plant on the *Kanapaha?*

A. None.

Q. Was there any ice plant on the boat?

A. None.

Q. On first-class, modern yachts do you find an electric-lighting plant?

Q. Did she continue the same course after you passed her, or did she change it?

Same objections.

A. She changed her course after I passed her.
Q. In what way?
A. Continued to steer the same course that I was steering.
Q. That is off shore?
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A. No. I never knew a man who was willing to lose his vessel.

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A. She cost about $300,000.

Q. She was a large boat, was she?

Same objections.

A. A boat of 800 tons gross.

Q. How old was this steam yacht *Kanapaha?*

Objected to as hearsay.

A. The records will show that. She is eighteen years old, about.

Q. Was there any electric-lighting plant on the *Kanapaha?*

A. None.

Q. Was there any ice plant on the boat?

A. None.

Q. On first-class, modern yachts do you find an electric-lighting plant?

Mr. HUGHES: I object to that as calling for a conclusion and opinion of the witness, as to what are first-class, modern yachts.

Q. On most modern steam yachts do you find electric-lighting plants?

Same objections.

A. Always.

Q. You know this from your experience?

A. Yes.

143 Q. And by having examined steam yachts?

A. Yes.

Q. Do you find an ice plant or refrigerating plant on modern steam yachts?

Objected to as immaterial and irrelevant.

A. Nearly all modern steam yachts have an ice plant; they are not considered modern unless they do have it.

Mr. HUGHES: I move to strike out the witness' statement, "They are not considered modern unless they do have it," as not responsive.

Q. What was the rate of speed of this yacht compared with the rate of speed of yachts of that size today?

Objected to as immaterial and irrelevant.

Q. Did the *Kanapaha* have a high rate of speed or a low rate of speed?

Same objections.

A. Considered a low rate of speed at the present time. Her speed was about eleven or twelve knots.

Q. How about consumption of coal?

A. Large for the boat; large for the size of the boat and the rate of speed.

Q. What part of the boat had been renewed since the building of the vessel?

Mr. HUGHES: I object to that as calling for hearsay testimony, as calling for the opinion of the witness, and as incompetent, irrelevant and immaterial.

A. The only thing that had been renewed on the *Kanapaha* was the boilers. The boilers were renewed by Mr. Morton before she was sold to Mr. Moore.

Mr. HUGHES: I move to strike out that testimony on the same grounds.

Q. Do you know by an examination of the *Kanapaha* what was new and what was old on her, from seeing the boat?

144 Mr. HUGHES: Same objection, as calling for an opinion of the witness, and as incompetent, irrelevant and immaterial.

A. From examination of the boat I would state that she hadn't had anything renewed but the boiler.

Mr. HUGHES: I move to strike out that answer on the same grounds.

The WITNESS: She had no new saloons and she had no new engine.

Q. You know these facts by your personal examination of the boat, that she had no new engines and no new saloons?

A. Yes, I know that.

Q. Did she have any new tubes?

A. She had no new tubes, and nothing new about her excepting the boilers.

Mr. HUGHES: I move to strike out the testimony of the witness as to what she had new or old, on the ground that it is an opinion or conclusion without any knowledge on his part.

Q. Now, Captain, were you ever master of the steam yacht *Hermione?*

A. Yes.

Q. Who owned her?

A. She was owned by the Hon. Henry L. Purse, of Boston.

Q. What was her tonnage?

Objected to as immaterial and irrelevant.

A. Her tonnage was 150 tons, about.

Q. She was a larger boat than the *Kanapaha?*

A. Yes.

Q. Was she a newer boat?

Mr. HUGHES: I object to any comparison between this yacht and any other yacht as incompetent and immaterial on the question of value or any other question involved in this case.

A. She was a boat about six years old, model design by Watson, and built in Scotland for the Allen Steamship Co., for the Allen Brothers.

145 Q. She is about six years old now, or was last September?

Same objections.

A. She would be about seven years old now, perhaps eight; this year seven or eight.

Q. Was she sold?

Same objections.

A. Yes.

Q. When—in 1898?

A. She was sold in 1896.

Q. To whom?

A. To Henry L. Purse of Boston. She was sold to the Government last spring.

Q. For what sum?

Mr. HUGHES: Objected to as immaterial, irrelevant and incompetent, also as hearsay, there being no knowledge on the part of the witness shown, and that evidence as well as of other steam yachts is incompetent and immaterial as to the question of value of the steam yacht in controversy.

A. She was sold, I think, for $55,000. The law firm of Russell & Putnam, in State street, Boston, will give you all particulars, if you wish them.

Mr. HUGHES: I move to strike out the answer on the same grounds.

Q. What was the fair value of the yacht *Kanapaha* in the summer of 1898 and at the time of the accident, that is, prior to the accident?

Mr. HUGHES: I desire to object to that as incompetent and irrelevant, the witness not having shown sufficient qualifications to give any evidence as to the value of the yacht; and in support of the objection I should like to ask him a question or two in cross-examination. Do you (to Mr. Bartlett) refuse me permission to
146 cross-examine the witness as to his competency to express the opinion of value?

Mr. BARTLETT: I do now.

Mr. HUGHES: I object to the questions on the grounds stated, and that there is no opportunity offered in a preliminary way to cross-examine the witness as to his competency to give an opinion, and that any opinion of the witness is incompetent and irrelevant to the issue in this case. I wish to add the objection that the question is improper in form, calling for the fair value and not the market value of the yacht.

Q. What was the fair and market value?

Same objection.

A. I would preface my answer by first stating that a yacht has no commercial value. You will understand that——

By Mr. HUGHES:

Q. You mean no market value?
A. No market value.

The WITNESS: The value of the yacht is a fancy value. According to my best belief, I said in my statement in New Orleans that I valued the yacht at $50,000, but if I was put on my oath, and she was at her dock and was put up at auction, that she wouldn't realize $30,000—between $30,000 and $40,000. The reason I stated $50,000 was that I wanted to give what I considered a fair value of the yacht. As I said before, a yacht has no value excepting a fancy valuation.

Mr. HUGHES: I move to strike out the answer of the witness on the ground that it appears that there is no market value of the

yacht, and that his opinion or statement as to the fancy value or other value which he may attach to her is incompetent and irrelevant.

147 Q. Capt. Atkinson, what, in your opinion, would the yacht *Kanapaha* have sold for in September, 1898, or at any time in the summer of 1898 prior to the accident, if offered for sale in New York.

Mr. HUGHES: That I object to as incompetent and irrelevant upon the ground that the witness has shown no qualification to give an opinion as to the value of the yacht or what she would have sold for in New York or elsewhere; and upon the further ground that it now appears there is no market value of the yacht, and any opinion of the witness is a statement too speculative to be received in evidence.

A. My opinion is that she would not realize $30,000.

Mr. HUGHES: I move to strike out the answer on the same grounds.

Q. She would not have realized then $30,000?
A. Not in September, 1898.
Q. Or in the summer of 1898?

Same objections.

A. No.

Motion to strike out upon same grounds.

Q. What was the rate of speed of the *Hermione?*

Objected to as immaterial and irrelevant.

A. Fourteen knots.
Q. Did she have an electric-lighting plant?

Same objections.

A. She had an electric-lighting plant, also electric storage batteries.
Q. And a refrigerating plant?
A. No.
Q. Was she modern in all her improvements?

Same objections.

A. Modern, with the exception of an ice plant. Classed A 1, British Lloyd's, for one hundred years.

148 Q. What was the comparative condition of the *Kanapaha* as compared with the *Hermione?*

Mr. HUGHES: That I object to as incompetent, irrelevant and immaterial, as being no proper evidence of value.

A. In my opinion there wasn't any comparison.
Q. Why not?

Objected to as calling for his opinion; as to his opinion incompetent, immaterial and irrelevant.

A. In the first place one was a boat of eighteen years of age, and the other a boat of six or seven years of age.

Q. That is, the *Kanapaha* being eighteen years of age?

A. Yes.

Q. And the *Hermione* being six or seven years of age?

A. Yes. Do you know the shipping furniture will deteriorate in value according to the age. A vessel of eighteen years of age can't be worth nearly as much money as a vessel of six years of age, supposing everything else to be equal.

Mr. HUGHES: I move to strike out that answer on the ground that it is incompetent and immaterial, and the witness has shown no qualifications to express an opinion on the subject.

Q. In what other points was the *Hermione* superior to the *Kanapaha?*

Same objection as incompetent and immaterial.

A. Age and equipment.

Q. What other steam yachts have you been familiar with—a number of them?

A. I was two years on Mr. Vanderbilt's *Valiant.*

Q. In what capacity?

A. I served as first and second officer of her.

149 Q. In what years?

A. About 1895—1894 or 1895. I was also master of Mr. Hannon's steam yacht *Emily.*

Q. For how long a time?

A. That was for the season, about three or four months. And I have commanded the sloop *Florida* and the sloop *Gulnare* and other sloops; the yacht *Emily,* and the yacht *Hermione,* and the steam yacht *Kanapaha,* and the steam yacht *Eleanor* and others. I hold a master's ocean license; also a first-class harbor license for the harbor of New York, for the State of Connecticut, Rhode Island, Massachusetts, as far east as York river, Maine.

Cross-examination by Mr. HUGHES:

Q. Captain, you say you have navigated in southern waters; for how many years?

A. I have navigated all over the world.

Q. For how long in southern waters?

A. I have been going to sea for 40 years; I have been master of a ship for the last 25 years; I have navigated in all navigable waters of the earth.

Q. You have been through the Bahama channel?

A. Yes.

Q. Frequently?

A. Frequently.

Q. How frequently?

A. I remember passing through the old Bahama channel as far back as 1872; and I traded on the north side of Cuba for several years; and I passed through the old Bahama channel last year several times.

Q. You have been through there several times?

A. Yes; you know that don't make any difference much.

Mr. HUGHES: I move to strike out the last part of the witness' answer, "you know that don't make any difference much," as not responsive.

Q. How long have you been master mariner?

A. I think my first certificate was issued in 1869.

Q. You have been a master ever since?

A. Yes. I was a master before that, but didn't hold a certificate of competency.

150 Q. But since 1869 when you have been at sea it has always been as master?

A. Always.

Q. Have you gone through the Bahama channel en route to Havana at any time?

A. From here to Havana?

Q. From anywhere to Havana?

A. Yes.

Q. Frequently?

A. No, not very frequently; just according to the nature of the voyage. The last time I went through the Bahama channel I had a load of coal from Cardiff for Havana; consequently I had to go through, or I selected that channel. You don't always go through the old Bahama channel to go to Havana.

Q. Do you remember coming to New York about the 2nd of June, 1898?

A. About that time, yes.

Q. You say you received a telegram; have you got that telegram?

A. No.

Q. Or a copy of it?

A. No.

Q. Where did you meet Manning's clerk in New York?

A. On the street.

Q. Where did you go from there?

A. I went to a hotel.

Q. Where were you employed as master of the yacht *Kanapaha?*

A. New York.

Q. What place in New York?

A. On the street.

Q. Did you go to the office of the New York Sun?

A. I did not.

Q. Have you ever been there?

A. I have.

Q. When have you been there?

Objected to as irrelevant and immaterial.

A. Today. I have been there on several occasions. I am acquainted with quite a number of reporters there that I met in Santiago last summer and I often call there to see them.

Q. When did you last call there?

A. This forenoon.

Q. Have you been there frequently before that?

A. Not since my arrival in New York.

Q. When did you arrive in New York?

A. On Monday.

Q. When did you leave the *Eleanor?*

151 A. On the Saturday previous, Saturday week previous to my arrival in New York on Monday.

Q. Where is the *Eleanor?*

A. She was at Nassau when I left.

Q. Did you go to the office of the New York Sun after the loss of the *Kanapaha?*

A. Yes.

Q. How long after?

A. About a month or a month and a half, a month about.

Q. Whom did you see there?

Objected to as irrelevant and immaterial and incompetent and improper.

A. I don't know; I see a number of people there I don't know.

Q. See any one there you did know?

A. I did. I saw Mr. Davis, Mr. Anderson.

Q. What is Mr. Davis' connection with the Sun?

A. He was a reporter on the Sun.

Q. Whom else did you see? Mr. Anderson, a reporter?

A. Mr. Anderson is a reporter.

Q. Who else?

A. That I knew?

Q. Yes, or that you were introduced to?

A. Mr. Chamberlain.

Q. Also a reporter?

A. Also a reporter. Saw two or three others whose names I don't know very well.

Q. Did you see Mr. Chester S. Lord?

A. Don't know him; never was introduced to him; don't know there is such a gentleman.

Q. Who paid your wages while you were on the *Kanapaha?*

Objected to.

A. I don't know.

Q. From whom did you get the money?

Objected to as immaterial and improper.

A. I got a check.

Q. Whose check?

A. Don't know.

152 Q. No recollection as to whose check it was?

A. No.

Q. How many times did you get a check while you were employed on the *Kanapaha?*

Same objection.

A. One check while I was away and another check when I returned for my money.

Q. Where did you get the check when you were aboard the *Kanapaha?*

A. Kingston, Jamaica.

Q. Who handed you the check?

A. The manager of the boat, Mr. Chamberlain.

Q. What do you mean by saying that he was the manager of the boat?

Objected to as immaterial, irrelevant and incompetent.

Q. Do you mean he was in charge of the boat?

A. Yes.

Q. Did you receive instructions from him?

A. Yes.

Q. Is that Mr. W. J. Chamberlain?

A. Yes.

Q. How long was he on the yacht *Kanapaha?*

A. He was on her all the time I was on her.

Q. And manager all that time?

A. Yes.

Q. Gave you instructions all the time you were on her?

A. Yes.

Q. Was this check to your order?

Objected to as incompetent, immaterial, irrelevant and improper.

A. I don't know; I got the money, or at least my friends got the money.

Q. You don't know to whose order it was?

A. It might have been my wife's order.

Q. Do you know who signed it?

Same objection.

153 A. Yes.

Q. Who?

A. Mr. Chamberlain signed it.

Q. Was it Mr. Chamberlain's individual check signed in his name?

A. I don't know.

Q. Did he sign it in your presence?

A. I don't know whether it was his individual check or not.

Q. Did he sign it in your presence?

A. I can't remember. It doesn't matter; I got the check from him and got the money for it; that will be sufficient.

Q. Do you recall whether there was any other name on the check; that is, in the signature of the check, besides Mr. Chamberlain's?

A. I do not. I do not know.

Q. You remember getting money when you came back to New York?

A. I remember getting money, yes.

Q. When you came back to New York?

A. Yes.

Q. After the loss of the *Kanapaha?*

A. Yes.

Q. Where did you get the money?

A. Sun office.

Q. In person?

A. Yes.

Q. Did you get it in cash?

A. Got it in cash, I think.

Q. Or in check?

A. I think I got it in cash.

Q. From whom?

A. From the cashier.

Q. At the Sun office?

A. At the Sun office or downstairs; I know it is in the basement of the Sun newspaper building.

Q. Didn't you have some voucher or order?

A. I had my account.

Q. Did you have your account checked off by anybody?

A. Only by the cashier. The account was handed in to the office.

Q. To whom did you hand the account in the first instance?

A. To Mr. Chamberlain.

Q. Was he there in the Sun office at that time?

A. He was here in New York at that time.

Q. Where did you first hand him the account?

A. I don't know particularly; I forget the circumstances exactly; I don't know where it would be; I think in the Sun office; or I may have sent it from New Orleans by mail.

154 Q. You got the account in the Sun office?

A. It was finally settled there.

Q. You had it when it was settled?

A. I got the money from there.

Q. Didn't you give the account to the cashier?

A. Well, I couldn't give it and have it.

Q. Did you give it to the cashier?

A. Yes; I presume so; I tendered my account and got the money for it.

Q. Who was the cashier?

A. I don't know.

Q. Who else did you see at the Sun office?

A. I saw hundreds of people at the Sun office, nobody that I know.

Q. Did you speak to any one there other than Mr. Chamberlain and the people you have mentioned?

A. Mr. Anderson, Mr. Acton Davis, and several others there that I was acquainted with that were on the staff.

Q. Did you sign a receipt for your money?

A. I don't remember.

Q. Did you sign a receipt for the money that you got from Chamberlain when you were on the boat?

A. I don't remember that.

Q. Did you ever get any money for your services as master of the yacht *Kanapaha* except what you got in the check from Chamberlain and what you received in the Sun office after you returned to New York?

Objected to as incompetent, irrelevant, and immaterial.

A. I never did.

Q. Did you get any money for expenses at any time while you were on the yacht *Kanapaha?*

A. For whose expenses?

Q. For any expenses?

A. The expenses of the yacht, do you mean?

Q. Or for your own expenses?

A. I think I paid the yacht's expenses on one or two occasions, and drew the money from Mr. Chamberlain to pay for coal, water, and grub.

155 Q. How many times did that occur?

A. About once a week, as a rule.

Q. Did you get that money in cash or check?

A. Generally in gold.

Q. You always got the money from Mr. Chamberlain?

A. Always did.

Q. Except for the money that you received from the cashier in the Sun office, did you at any time receive any money while you were on board the yacht *Kanapaha* from any one except Mr. Chamberlain?

Objected to as incompetent and improper and immaterial.

A. Never did.

Q. Did you sign any papers at the time when you became or agreed to become master of the yacht *Kanapaha?*

A. No, sir.

Q. How did you come home after the loss of the yacht *Kanapaha*, or come to New York?

A. I was rescued by the steamer *Albus*, a Norwegian steamer, and remained on board of her for five or six days while she was discharging her cargo at Nuevitas, and then came from there to Key West; we were not allowed to land at Key West, and we went from there to Tortugas, where we were not allowed to land either, and went from there to New Orleans, landed in New Orleans, and came from New Orleans home by rail.

Q. Did you receive any money for your expenses on that journey or any part of them?

A. No.

Q. Was Chamberlain with you?

A. No.

Q. Anybody with you to pay your expenses?

A. No.

Q. Were you given tickets?
A. No.
Q. You paid your expenses yourself?
A. No.
Q. Who did pay them?
A. Where?
Q. From New Orleans to New York.

Objected to as immaterial, incompetent, improper and irrelevant.

156 A. What is the name of that paper there?
Q. Picayune.
A. No, the Times—The Times-Democrat.
Q. The New Orleans Times-Democrat?
A. Yes.
Q. Did you go to the office of that paper to get your ticket?
A. Yes.
Q. Who told you to go there?

Objected to as incompetent, immaterial, improper and irrelevant.

A. I don't remember who told me.
Q. Some one did?
A. I had authority to go there.
Q. From whom did you get authority?
A. Somebody in connection with the Sun newspaper.
Q. Did you get any money from anybody else for your expenses when you were bound for New York?
A. No; I drew my money from the bank in New Orleans.
Q. Your own account?
A. No; through the representation of the Times-Democrat.
Q. What bank was that?
A. Don't remember.
Q. Did they give you a draft on some bank?
A. No, they gave me sufficient money to pay my expenses.
Q. I mean the New Orleans Times-Democrat gave you a draft on the bank.
A. They gave me an order on this bank and introduced me to that bank and satisfied them that everything was correct.
Q. Did you get a letter, any authority, to go to the Times-Democrat?
A. I can't remember; I don't think I got any letter; I think it was a telegram of some kind.
Q. From whom?
A. From the Sun newspaper office.
Q. To whom?
A. To the Times-Democrat.
Q. How did you get word about it?
A. They informed me.
Q. The Times-Democrat?
A. Yes.
Q. Where did they inform you?

A. I think at my hotel.

157 Q. How did they know you were at that hotel?

Objected to as incompetent and immaterial.

A. Because it was reported when I arrived there. My arrival was reported at New Orleans, the same way all those things are known.

Q. Who was on the *Kanapaha* while you were there aside from the crew?

A. All the newspaper fraternity of New York and Chicago.

Q. Name those that you remember.

A. Mr. Chamberlain, Mr. Carroll, Mr. Anderson, Mr. Acton Davis, Mr. Root, Mr. Carleton T. Chapman of the Harper's Magazine, Mr. Marshall of the Journal, and a number of others that belong to the Chicago papers, and a number of others that I never heard the names of and wouldn't know them if I was to meet them on the street today.

Q. What reporters of the Sun were on the yacht?

A. Davis, Anderson, Root, Chamberlain; that is about all I can recall at the present moment.

Q. Were they all on the yacht when you took command?

A. Yes, I think they were all there; they were not always on the yacht; they were coming back and forth; some went to the front with the army, some were with the warships, and they were going back and forth as occasion required.

Q. Making the yacht their headquarters?

A. Yes.

Q. You have mentioned one representative of Harper's Magazine; was there more than one?

A. No.

Q. Was there a representative of Harper's Weekly?

A. This was a representative; he was the special artist for Harper's; might have been the weekly.

Q. Who was that?

A. This Carleton T. Chapman, the man who does all the sketching for Harper's.

Q. Aside from the reporters or artists for the Sun and Harper's Magazine or Harper's Weekly, what reporters were on the yacht while you were there?

A. We had various reporters.

Q. Of what papers?

158 A. We had Marshall, of the Journal, who was wounded the next day after we left; we had another gentleman by the name of Mumford; I think he belongs to the Sun; we had several of the Chicago men, I don't know their names.

Q. Do you remember a man by the name of Spears?

A. No.

Q. How long was Mr. Anderson on the yacht while you were there?

A. Well, he was off and on during all the time, from the time I took command of her until she was lost. He wasn't always with

us; he was sometimes ashore and sometimes with us, but he was not on the yacht at the time of her loss.

Q. Who directed you as to the ports that should be visited or the places to which the yacht should go?

A. Mr. Chamberlain.

Q. Invariably?

A. Yes; my manager.

Q. You remember being at Ponce about the first of September?

A. I think we were, yes.

Q. You were instructed, I think you said, to proceed from Ponce to Havana?

A. Yes.

Q. Who gave you those instructions?

A. I think Mr. Chamberlain.

Q. You called at Cape Haytien?

A. Yes.

Q. How long did you remain there?

A. Over night.

Q. How long was that after you had left Ponce?

A. The second day, I think.

Q. That would bring you to about the 3rd of September?

A. Yes.

Q. And you left Cape Haytien about the 4th of September?

A. I think we left on the afternoon of the 4th. I won't be sure of those dates.

Q. About what time in the afternoon?

A. I think it was about four or five o'clock; I am not certain about that.

Q. And your instructions were then to proceed direct to Havana through the old Bahama channel?

A. Yes.

Q. Do you remember passing Cape Lucretia?

A. Yes.

Q. How long was that after you had left Cape Haytien?

A. Don't remember.

159 Q. Was it the next morning?

A. I don't know, unless I figure up the distance. I can figure up the distance and tell you about what time it was. Tell me how many miles it is from Cape Haytien to Cape Lucretia and I can tell you what time it was when we passed there.

Q. Did you stop at all from Cape Haytien up to the time of the accident?

A. No.

Q. Did you proceed from Cape Haytien up to the time of the accident at a uniform rate of speed?

A. Yes, sir.

Q. And that was about what?

A. About twelve knots.

Q. And was the smooth condition of the sea that you speak of true of all the time after you left Cape Haytien?

A. Don't remember; don't remember that it was.

Q. Had you had any fog between Cape Haytien and the time of the accident?

A. No; we don't have fogs as a rule in the tropics.

Q. Well, you didn't have it?

A. We didn't have it.

Q. Did you have any rough weather?

A. No.

Q. As far as you can recollect, the sea was smooth?

A. The sea was smooth at the time of the accident.

Q. You remember that you left Cape Haytien in the afternoon of the day, before dark?

A. I don't know; I think so, that is all.

Q. That is your best recollection.

A. Yes.

Q. Do you remember passing Gibara?

A. Yes, I remember we passed Gibara.

Q. Remember how far Gibara is from Cape Haytien?

A. No, I don't.

Q. How far is it from Cape Lucretia?

A. I don't know.

Q. How far were you from the land at Cape Lucretia?

A. I have made a mistake in saying Rebecca; I meant Lucretia. Where I have said Rebecca, change it to Lucretia.

Q. Then whenever in your direct examination you have used the word "Rebecca," you should have used the word "Lucretia"?

A. Yes.

160 Q. You remember passing Cape Lucretia early in the morning of the day of the accident?

A. I don't know. I refer you to my report.

Q. I want your best recollection now.

A. I have not made a specialty of remembering those things; I simply wrote them out and handed my report in. My memory I find is defective and often has played tricks on me. I don't place any dependence on my memory at all.

Q. Do you remember passing Cape Lucretia?

A. Yes; I had to pass Cape Lucretia to get from where I was to where I was going; I had to pass there.

Q. Just answer my questions.

A. There is only one question to it; I was going from Ponce, Porto Rico, to Havana; I was going as fast as I could at twelve knots an hour, and the best course I knew to get there. I am not going to state when I passed Cape Lucretia; I can't remember it, and I am not going to state any particular time.

Q. Will you answer this question: Will you state whether or not you passed Cape Lucretia in the morning of the day of the accident?

A. I think I did.

Q. What is your best recollection as to the time when you passed Cape Lucretia in the morning of the day of the accident?

A. Don't remember.

Q. Don't remember at all?

A. Don't remember at all.

Q. Have you any memory as to how far Cape Lucretia is from Nuevitas?

A. No.

Q. Do you remember seeing Cape Lucretia when you passed it?

A. Yes.

Q. How far were you from the land?

A. About six miles.

Q. How far off can you see the land along that coast where you were?

A. Do you mean the land right down at the seashore, or what do you mean?

Q. I mean the nearest land.

A. About five miles.

Q. Or any land?

A. Any land about 35 miles, 40 miles, 50 miles.

Q. What is the character of that coast?

161 A. The character of the coast is low; the character of the land inland is mountainous; you can see the mountains 40 or 50 miles distant, while you couldn't see the lowland five miles.

Q. Was that true all along?

A. That is true.

Q. Is it true from Cape Lucretia to Nuevitas?

A. Yes.

Q. What time did the sun set at about the 5th of September, 1898, in that latitude?

A. Didn't look it up.

Q. Do you remember about the time the sun set on the day of the accident in question?

A. No; I wasn't interested in seeing the sun set that day. I can give you exactly the time the sun set if you will allow me to go out and look it up.

Q. I want your best recollection.

A. I should say the sun set somewhere from six to half past six o'clock. Generally when you are in the tropics where you have twelve hours sun there, it is not far from six o'clock rising and setting.

Q. It was about half past six?

A. Perhaps it was; it may have been a quarter past.

Q. And about how long is the twilight afterwards?

A. There isn't any twilight.

Q. There is some at that point, at the place you were?

A. No.

Q. You mean that it grew dark the instant the sun went down?

A. No.

Q. How long was there a twilight after the sun set?

A. I presume you know what causes the twilight.

Q. I am asking you about how long it was after the setting of the sun when it became dark?

A. It might have been fifteen minutes or ten minutes. You must know that.

Q. I am not talking about what I know; I want to know what you are willing to state.

A. I say five or ten minutes.

Q. You mean that it grew absolutely dark within ten minutes after the sun set?

A. I don't mean that; I mean that it might have been dark within ten minutes after the sun set, or it might have been fifteen minutes.

162 Q. Or it might have been a half an hour?

A. It is a very short time when it gets dark.

Q. Well, what do you mean by dark?

A. Dark enough to light the side lights and masthead lanterns. We always light them at sundown.

Q. Was it as dark within ten minutes after sunset as it was in a half an hour after sunset?

Mr. BARTLETT: Objected to as incompetent, improper, and immaterial.

A. I don't know.

Q. You mean that?

A. I do. There was no moon at the time and I know it gets dark in the tropics very quick after sundown.

Q. Was it as dark within ten minutes after sunset as it was in an hour after sunset?

Same objections.

A. I don't know.

Q. Was it as dark within ten minutes after sunset as it was two hours after sunset on the night in question?

Same objections.

A. I presume it was about as dark; perhaps it might have been a little darker.

Q. When?

A. Two hours afterwards. In all reasonableness, don't you think, with all reasonableness, it would be darker two hours after sundown than it would be ten minutes after?

Q. Why don't you say so?

A. I say it was dark; according to the laws it was dark to have the side lights and masthead lights out.

Q. Captain, if you will answer the questions; what I want to know is whether it was just as dark within ten minutes after sunset as it was two hours later; do you mean to say that it was?

A. No, I don't mean to say anything of the kind; I mean to say that I don't know. I have seen it as dark in the middle of the afternoon as it would be after sunset.

163 Q. I am talking about this particular occasion; I suppose that occasion made some impression on your mind?

A. It did after the ship went ashore, but it was dark then.

Q. What time did the ship run on the reef?

A. I said about half past seven or a quarter to eight.

Q. That statement was true?
A. Whatever statement I made in my report is just as true as I can remember.
Q. That statement you just made?
A. I said in my report that I made when I went ashore.
Q. Then do you remember what time the ship did run aground?
A. You will find that in the report, as near as I can remember. I told the truth in that and I am not going to say anything contradicting that.

Mr. HUGHES: I move to strike out that answer.
The WITNESS: In my report I state when that ship went aground, as near as I can remember. Now, I refer you to that report, because that was then fresh in my memory, and when I made that report I knew the things correct. Now at this distant day I don't remember just when those things occurred. You say this thing happened so and so; I say I am not going to commit myself. I say when I made that report that it was fresh in my mind and that it was to the best of my knowledge. What that says is as near the truth as it can be.

Q. Have you any recollection at the present time at what time the yacht *Kanapaha* went aground or on the reef on the afternoon or evening of September 5, 1898?

Mr. BARTLETT: Objected to as incompetent, irrelevant, improper and immaterial, and as having already been answered, the captain having said that the boat struck at 7.30 or a quarter to eight, and as an attempt to bulldoze the witness.
Mr. HUGHES: I object to that statement of counsel.

Q. Now, I will repeat this question: You say, Captain, that
164 you refer me to your report and that you intend to adhere to what you said in your report. Now, I want to know if you mean by that you have no recollection at present at what hour or about what hour the yacht *Kanapaha* went aground?

Mr. BARTLETT: Objected to as having already been answered three or four times. He is just going over the same ground again.

Q. Will you answer that question?
A. I have answered it.
Q. Will you answer it?
A. I have answered it.
Q. (Question repeated.)
A. I said it went ashore at about 7.30 or quarter to eight, and what I said in my report I believe to be true.
Q. When you say that the yacht went aground about half past seven or quarter to eight, you mean that is your present best recollection, do you?

Mr. BARTLETT: Objected to as incompetent, improper and immaterial and as having already been answered.

A. I don't see whether it makes much difference whether it went

ashore at half past six or half past ten. I don't divvy from my report, and what I state there I stand by.

Q. (Question repeated—read by stenographer.)

A. My best recollection, yes.

Q. Will you state how long it was after sunset, I mean according to your best recollection now, when it was that the yacht went aground?

A. The same thing in a different form—I don't remember.

Q. Will you state how long after it became dark on the evening in question the yacht *Kanapaha* went aground?

A. About an hour and a half or an hour and a quarter; anywhere from an hour to an hour and a half.

Q. You said that these lights at Nuevitas harbor were the only lights along the coast which were not lit that night; is that true?

A. Yes, that is true.

Q. You had noticed other lights?

A. Yes.

165 Q. Where did you notice them?

A. Point Maysi, on the east end of Cuba.

Q. I am referring to this occasion?

A. This night was only just commenced, and there were no lights in that vicinity that night. Because there wasn't any other, how could I see it? You are asking me a question; I say there is no other lights to be seen.

Q. Then on the night in question, you mean to say that you didn't see any lights?

A. No. That is just what it means. Any shore lights; I saw the ship's lights coming up astern. You might put that down and define it.

Q. How far were you from shore during the afternoon of this day?

A. I judge five or six miles, according to the indentations of the coast; six or seven miles.

Q. The land was in sight all the afternoon?

A. The hills were in sight.

Q. The coast was in sight?

A. No, I beg your pardon.

Q. It was at times?

A. I don't think it was at any time; I saw the island, in the interior; I can't say that I saw the coast line.

Q. Do you recollect what course you were steering at the time you run upon this reef?

A. No.

Q. Wasn't it a northwesterly course?

A. Yes.

Q. You are sure of that?

A. Yes, I am sure of that.

Q. Do you remember how far you were from land about sunset?

A. I judge about six miles.

Q. Where were you at sunset?

A. About six miles off the coast of Cuba, according to my report.

Q. What point?

A. Off the coast of Cuba.

Q. What is the last point on the north coast of Cuba that you saw before the sun went down on that day?

A. I can't remember without referring to the chart.

Q. You have no recollection at all?

A. No.

Q. Can you remember any points that you did see during the course of the afternoon on the day in question on the north coast of Cuba?

A. Not now; I couldn't at this date.

Q. Without mentioning just what points by name, you remember that you did see points?

166 A. I remember that I saw the land on the other side of Cuba all day up to sundown.

Q. How far was the reef on which the yacht struck from the land?

A. I have already answered that.

Q. Will you answer it again?

A. Two miles.

Q. That was a reef that run parallel with the coast, didn't it?

A. Yes.

Q. For about how far?

A. About seven miles to eastward off the entrance of Nuevitas where the yacht struck on the outermost point of the reef.

Q. How far did it extend from that point eastward?

A. I didn't look it up. You will find it on the general chart, if you look it up.

Q. Have you looked it up?

A. Yes; but I never measured it.

Q. Can you tell me generally about how far it was?

A. No.

Q. What chart did you look it up on?

A. It is seven miles from where the yacht struck to the entrance of Nuevitas. How far east the reef extends I don't know. I refer you to the chart.

Q. What chart?

A. To the English admiralty chart on the north side of Cuba, through old Bahama channel.

Q. Have you seen it on other charts?

A. Yes.

Q. What other charts?

A. I don't remember, but I have seen it.

Q. Where did you see it on other charts?

Mr. BARTLETT: Objected to as incompetent, irrelevant and immaterial, unless he saw it previous to the accident.

A. I was aboard the yacht *Eleanor* when I saw it last.

Q. You don't remember the name of the chart?

A. I could get you the chart.

Q. Do you understand that the reef ran from the point where the yacht struck eastward?

A. Yes.

Q. You don't know how far from the point where the boat struck to the eastward?

A. It follows the line of the coast, some distance out, eastward.

167 Q. Its whole line is shown on the English admiralty chart?

A. Yes.

Q. You didn't intend to call at Nuevitas?

A. No.

Q. Your instructions were, I think you have testified, to go direct to Havana?

A. Yes, to meet the commission there.

Q. During the afternoon of the day in question did you endeavor to ascertain how far you were from the coast?

A. In what way?

Q. In any way?

A. No; only by my course.

Q. Did you take any means during the afternoon of the day in question in which this accident occurred to determine just how far you were from the coast or to verify your position?

A. Any special means?

Q. Any means.

A. No more means than I had been using—the course, and the distance run, and the distance off shore.

Q. Did you endeavor to ascertain the distance off shore?

A. The distance from Cape Lucretia, the course run, the course steered, and the distance run.

Q. Did you endeavor to ascertain your distance off shore on the afternoon?

A. No.

Q. In no way?

A. Yes, I obtained my distance off shore, as I say, by the distance run, the course steered.

Q. You didn't attempt in any other way to determine your distance off coast?

A. No, because it wouldn't have been any good.

Mr. HUGHES: I move to strike out that answer as irresponsive.

The WITNESS: I couldn't do it without a correct latitude and a correct longitude by observation.

Mr. HUGHES: I move to strike out the last sta-ement of the witness that he couldn't do it without taking a correct latitude and longitude, as irresponsive.

Q. Did you take observations on the day of the accident?

A. I think I did take observations for latitude, yes.

168 Q. And longitude?

A. No.

Q. You got your latitude at noon?

A. At noon.

Q. Well, that afternoon what did you do, if anything, before the accident, to ascertain your position off shore?

A. Steered the course and logged the distance by patent log.

Q. Did you know at the time that the compasses were all right?

A. Yes.

Q. And you knew the speed at which the vessel was going?

A. Yes.

Q. And you knew your exact position at noon when you took your observation?

A. Yes.

Q. And land was in sight all the afternoon?

A. Yes, the hills on the back of the country, 40 or 50 miles distant. The coast line, I don't know; I couldn't see the coast.

Q. What did you do after the accident, that is, where did you yourself go?

A. On board of the *Albus* steamship.

Q. And did you remain on board of the *Albus*, or did you go ashore?

A. Remained on board of the *Albus*.

Q. Did you go ashore at all?

A. Yes.

Q. I mean before you returned to New Orleans?

A. No; I went on shore at Nuevitas to try to get some place to live for the crew.

Q. Did you go and look at the wreck?

A. Went aboard the wreck.

Q. That was the next day?

A. The next day I couldn't get aboard of her.

Q. Why not?

A. Too much sea on.

Q. Was there so much sea that you could see the water breaking over the reef?

A. Yes. I pulled out to her in a boat the next day.

Q. For how long a distance the next day could you see the water breaking over the reef?

A. The whole length of the reef.

Q. You had been calculating in the afternoon how far the vessel had proceeded from time to time, had you not?

A. Yes.

169 Q. And you had been expecting to make Nuevitas light, had you not, or lights at Nuevitas harbor?

A. At dark, yes.

Q. How long had you been expecting to make them, or how long had you been looking for them?

A. Didn't expect to make them until after dark. They don't show very well in the daytime.

Q. You expected to see them at dark, didn't you?

A. Yes.

Q. Then you expected to see these lights at about half past six?

A. As soon as it was dark enough for a light to show.

Q. Was it dark enough for a light to show at half past six?
A. I don't know.
Q. Have you any recollection about that?
A. I have recollection, but I am not certain of my recollection, whether it was dark at half past six or whether it was dark at a quarter past six.
Q. Can you state what recollection you have?
A. Not positively.
Q. Can you state what recollection you have?
A. The recollection I had at the time was that I would see the light as soon as it was lit.
Q. Can you state what recollection you have now as to whether it was dark enough at half past six on the night of the accident to see the Nuevitas light had it been lighted?
A. No.
Q. Do you say it was dark enough at seven o'clock on the night in question to see the light had it been lighted?
A. Yes. I won't say it was dark enough at six; I will say it was dark enough at seven.
Q. And you won't say either way as to half past six?
A. No; it might have been a quarter past six, or twenty minutes past.
Q. But between half past six and seven you would say it would have been dark enough to have seen the light as soon as the light was lit?
A. Yes.
Q. That would have been before seven o'clock?
A. Yes.
170 Q. How long before?
A. You want to get me to say something to contradict what I have said before.
Q. Answer the question.

The COMMISSIONER: If you don't know say so, but answer the question.

A. I have told you repeatedly that I didn't know what time it was the sun set within ten or fifteen minutes. I won't say how long before.
The COMMISSIONER: Just answer the question.
The WITNESS: Well, I don't know, but I will give you my best knowledge on that point, that I run for one hour after dark and didn't make the lights. Now, I don't care what time it was dark or wasn't dark; but I run one hour after the lights should have been lit, but they weren't lit.
Q. That is, you refer to the hour immediately preceding the accident, the running of the yacht upon the reef?
A. Yes.
Q. And you expected to see the lights, as I understand you, an hour before the accident occurred?
A. Yes.

Q. You had been around the north coast of Cuba during the summer of 1898 prior to the night of the accident, had you not?
A. Yes.
Q. You had been to Havana?
A. Yes.
Q. And had been off Santiago?
A. Yes; I had been on the north side, but not off Havana.
Q. Had you been off Nuevitas?
A. Yes, passed Nuevitas.
Q. Had you been off Cape Lucretia and various points?
A. No, not various points.
Q. Cape Maysi?
A. I had passed down through the old Bahama channel, and along the north side of Cuba, and around Cape Maysi, and spent the summer, or two or three months of it, during the campaign there, on the north side.

171 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, Thomas Alexander, a commissioner duly appointed by the district court of the United States, for the southern district of New York,

Do hereby certify, that on the 30th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, I was attended by Franklin Bartlett, Esq., proctor for the respondent, and by Messrs. Charles E. Hughes and Archibald Murray, proctors for the libellant, and by the witness, who being of sound mind and lawful age, and the witness being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition being taken by a stenographer in pursuance of the consent of the proctors for both parties, in the presence of the witness and from his statement, the signing thereof by the witness was waived.

I further certify, that the foregoing deposition was taken by consent of both parties, as per stipulation on first page thereof.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this third day of April, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and thirty-third.

THOS. ALEXANDER,
United States Commissioner, Duly Appointed by the District Court of the United States for the Southern District of New York.

172 THOMAS A. ST. JOHNSON, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. You reside in New York?
A. Yes, sir.
Q. What is your occupation?
A. I am clerk in Manning's yacht agency, the office of Thomas Manning.
Q. Were you employed in that office in April and May, 1898?
A. Yes, sir.

By the COURT:

Q. What is Mr. Manning's business?
A. Yacht broker.

By Mr. HUGHES:

Q. Do you recall receiving a check for $5,000 dated April 2d, 1898, to the order of Thomas Manning?
A. Yes, sir.
Q. Signed by "William M. Laffan, p'r L. O. Macdaniel"?
A. I don't remember whom it was signed by; I remember the $5,000 check.
Q. For the yacht *Kanapaha*?
A. Yes, sir.
Q. When was that received?

Objected to the testimony of the check when the witness says he does not know how it was signed.

Mr. HUGHES: I want to prove that when they got the check they deposited it in the bank. We had it in the Sun's office April 2d.

By the COURT:

Q. Do you know when you got it?
A. I don't know the man's name. I am pretty sure the check was signed by the Sun Publishing Company but who was attorney or whatever that was——

Mr. BARTLETT: I object to that sort of evidence, that it was "signed by the Sun Publishing Company."

173 By Mr. HUGHES:

Q. The check for $5,000 which the witness says he knows was received, I want to know when that check was received and when it was deposited in the bank?
A. It was received on April 2d and deposited the same day by myself.
Q. To the credit of Thomas Manning?
A. To the credit of Thomas Manning, yes.
Q. Do you recall a check for $10,000 dated May 14, 1898, which was received for the yacht *Kanapaha*?

A. I recall the check; I don't recall it was dated May 14, but I deposited it on May 16.

Q. To the credit of Thomas Manning?

A. To the credit of Thomas Manning, yes. On May 16 my entry in the check book shows.

The COURT: Do you wish to prove that Chamberlin gave directions up to the time that the yacht was lost, after Anderson left or after Spears left, and that he gave directions in the same way Anderson and Spears gave directions?

Mr. HUGHES: We want to prove he was in control of the yacht and received his directions from the Sun and the money from the Sun to pay them and that he was there at the time of the loss of the yacht. We want to prove all the facts that he knows.

Mr. BARTLETT: We have the deposition of Atkinson and the engineer and the loss is proven.

Mr. MURRAY: We have one or two other witnesses on the question of negligence.

Mr. BARTLETT: I suppose you will admit that the board of trustees or the directors of the Sun never authorized the making of this charter.

Mr. HUGHES: We don't admit anything of the sort.

The COURT: You may take the witness' testimony Monday in the adjoining room. I shall not hear them.

174 Mr. HUGHES: We offer in evidence the papers marked for identification Exhibits 3, 4, 5, 11 and 12.

Mr. BARTLETT: I object to Exhibit 3 for identification as incompetent, improper, irrelevant and immaterial; and on the specific ground that it expired by its very terms within two months of the 1st day of April, 1898.

And the same objection applies to Exhibit 12 for identification.

I also object on the specific ground that the first charter-party was made by Chester S. Lord of the city of New York, and not by the respondent.

I make the same specific objections to No. 3.

I object to Exhibits 4 and 5 for identification as incompetent, improper, irrelevant and immaterial; and on the ground that they were made by Chester S. Lord and not by the respondent.

The COURT: Rulings on those are reserved.

NEW YORK, *April* 17, 1899.

LEONARD O. MACDANIEL, recalled for libellant, testifies:

By Mr. HUGHES:

Q. You have been unable to find any voucher of the payment of $5,000 and $10,000 on April 2d, 1898, and May 14, 1898, respectively, for the *Kanapaha*?

A. I found no vouchers.

Q. Have you produced the stub of the check given for the $10,000 of May 14, which was produced and read in evidence the other day?

A. I have it here.

Q. This is not the same check book which you produce the other day out of which the $5,000 check was taken?

A. No, sir.

175 Q. What is the difference between the two check books?

Objected to, that the witness has said what this is.

A. This is the general check book of the Sun which I have here, which requires two signatures to make the check good.

Q. What two signatures are required to make the check good?

A. The president, secretary, manager or a trustee.

Q. You don't sign checks drawn out of this check book you produced this morning?

A. I do not.

Q. In this check book is the stub of the check of $10,000 May 14, 1898?

A. Yes.

Q. Read it.

A. "No. 23161. May 14, 1898. Thomas Manning"—written out in full—"ten thousand."

Q. That check was the one produced signed by "Thomas Hitchcock, secretary," and "W. M. Laffan, manager"?

A. It was.

Cross-examined by counsel for respondent.

By Mr. BARTLETT:

Q. Those checks are signed by Mr. Hitchcock in advance, are they not?

Objected to unless the witness knows whether this check was signed in advance.

By the COURT:

Q. I understood you to say a moment ago it required to be signed by the president?

A. Any two of the four names I gave.

Q. What else is there on the stub?

A. That is all. No explanation.

Q. The check is made to Manning?

A. Thomas Manning, ten thousand, that is all.

176 By Mr. BARTLETT:

Q. Are those checks signed by the secretary in advance?

Objected to unless the witness knows this particular check was signed by the secretary in advance. The witness stated the other day he had no knowledge of the drawing of that check.

The COURT: He may state what he knows.

Libellant excepts.

A. Occasionally one of the two. Two signatures are never put on the check in advance, but one often is.

By Mr. HUGHES:

Q. Do you know whether any one of the signatures on the check of $10,000, May 14, 1898, the stub of which you have just read, was put on in advance?

A. *I do not know. I was away that day.*

Q. This check for $10,000 is the one you entered and the one to which you refer in your entry in the journal, "chartered to October 1st, *Kanapaha*, $10,000"?

A. Yes, sir.

By Mr. BARTLETT:

Q. What was the loss to the Sun on the Spanish war account?

Objected to as immaterial and irrelevant.

Mr. BARTLETT: They have gone into the "Spanish war account," and your honor allowed it to be read in evidence.

The COURT: I don't think you objected to that, did you? But the object of that was to understand what was the meaning of the phrase "provisional account" and what was done. I understand and understood your defence to consist in the claim that this contract never had the support of the corporation.

Mr. BARTLETT: Yes.

177 The COURT: That this enterprise in chartering the yacht never had the authority of the corporation as a corporation, and that the corporation, as such, is not held by it. Here is a proof that there was going on for a considerable series of times payments and receipts under provisional accounts which were kept in a certain way. As bearing on the question of the effect of that as an admission by the corporation, it seemed to me to be necessary to admit what was the nature of that provisional account.

I exclude this question.

Mr. BARTLETT: We except, on the ground the matter has been already gone into.

Q. What was the total amount received from other newspapers in connection with the yacht *Kanapaha* or for being allowed to go on board that yacht?

Mr. HUGHES: You mean by the Sun?

Q. I mean by the Sun from all these papers?

A. Not over $5,000.

Q. Not over $5,000 in all?

A. No, sir.

Redirect by counsel for libellant.

By Mr. HUGHES:

Q. Turn to the Spanish war account on folio 499 of the ledger of the Sun, the closing entry in that account under date of December 31, 1898, is "editorial expense" closing "$20,731.11," is it not?

A. Yes, sir.

Objected to as incompetent, improper, irrelevant and immaterial; and on the ground that it has already been answered.

Mr. HUGHES: I want to show that was transferred to the "editorial expense," which account—"editorial expense"—was closed, balance was attached to *profits and loss* and the accounts of
178 the Sun finally adjusted when the matter was on the books of the Sun entirely closed.

The COURT: He has already said it was transferred to the "editorial expense." As to the profits and loss that is additional.

Objected to as irrelevant and immaterial and as not within any issue contained in these pleadings, and as having happened subsequently to the month of September, 1898.

By the COURT:

Q. Is the editorial account to which you refer, and to which this last item in the Spanish war account was transferred, a special or general account of the editorial expenses in the work of publishing the Sun?

A. General account; always in existence.

By Mr. HUGHES:

Q. The editorial expense account to which this last item in the Spanish war account was transferred from December 31, 1898, was closed, was it not, on December 31, 1898, and the balance of that account transferred to the profit and loss account of the Sun?

A. Yes.

By the COURT:

Q. Does that differ at all from the balancing of accounts of the close of the year?

A. We close our books four times a year.

Q. When you say the account was closed, is that the sense in which you close your books four times a year?

A. Speaking of the "Spanish war account"?

Q. No, "editorial expense account."

A. It was closed for that quarter.

By Mr. HUGHES:

Q. Finally closed, there was no further adjustment?

A. That quarter's account was closed.

By Mr. BARTLETT:

Q. Just as it is done four times a year?

A. Exactly.

179 By the COURT:

Q. You said the balance was carried to "Profit and loss"?

A. The balance of the "Editorial expense account," yes, sir.

Q. Is, or is not, that always an account which involves a balance to be carried to "Profit and loss"?

A. Inevitably a loss.

Q. It merely represents the expenses of the Sun for that department?
A. Yes.

Recross by counsel for respondent.

By Mr. BARTLETT:

Q. You are recording secretary of the Sun, aren't you?
A. Yes, sir.
Q. Produce the minute book of the meeting of the board of trustees.
A. (The witness does as requested.)

Mr. BARTLETT: Will you admit that the board of trustees or directors of the Sun never authorized the execution of these papers?
Mr. HUGHES: I will not.

Q. You are recording secretary of The Sun Printing and Publishing Association, this respondent?
A. I am.
Q. How long have you been such?
A. Between nine and ten years.
Q. And as such are you present at all the meetings of the board of trustees?
A. I am.
Q. Were you present at all meetings of the board of trustees in the year 1898?
A. I was.
Q. And did you keep the minutes of such meetings?
A. I did.
Q. At any meeting was the execution of any charter-party for the yacht *Kanapaha*, or any agreement of a suretyship in reference thereto such as is found in these Exhibits 3, 4, 5 and 12, authorized by said board of trustees?

Objected to as incompetent, and leading; also that the
180 minutes of the board of trustees during the period in question should be offered in evidence.

By the COURT:

Q. Have you the minutes here?
A. I have.
Q. With that statement, I will allow you to state whether there are any minutes on that subject.

Mr. HUGHES: We except to that as calling for the conclusion of the witness; as incompetent, and as not the best evidence.

A. No.

By Mr. BARTLETT:

Q. Will you produce the minutes?
A. (The witness produces them.)

Mr. BARTLETT: I offer in evidence all the minutes for the year 1898.

The COURT: The witness says there is nothing in the minutes on this subject. Counsel can examine them and if he finds anything in particular he can put it in evidence.

Mr. HUGHES: I haven't the slightest objection to these minutes going in evidence.

The COURT: You can put them in if you wish, if there is anything pertinent.

Mr. BARTLETT: I offer in evidence the minutes of April 26, 1898, on this point; to show that at that meeting application was received from the Third Avenue Railway Company for permission to change their motive power, and on motion of Mr. Hitchcock it was resolved "That said application be hereby granted, and that the president be authorized to sign the same and to affix the corporate seal of the association to said instrument." That is to show what the practice was in signing such instruments.

Mr. HUGHES: I object to the introduction of the minutes
181 in question unless all the minutes of the board of trustees of the Sun during the period are submitted in evidence, and to that we have no objection whatever, in fact we desire to have them go in.

The COURT: Under objection I will not admit the minutes in that way. I allow you to prove what is the practice of the corporation in regard to authority.

Q. What is the practice of the corporation of signing written instruments in behalf of the corporation?

Objected to as incompetent, irrelevant and improper, that the practice of the corporation with regard to the signing of written instruments in general is not binding upon this libellant in reference to the authority of Mr. Lord to execute the instruments in question on behalf of the Sun.

The COURT: I don't admit it because I think it conclusive, but I must admit it as part of the evidence.

Mr. HUGHES: I object further, on the ground that the witness not being a trustee of the Sun, but the cashier and recording secretary of the Sun, is not shown to be qualified to speak as to the practice of the Sun in the execution of written instruments or in the making of contracts; it does not appear that he has charge of the business of the Sun in which such contracts are made.

The COURT: He has been for nine or ten years recording secretary; I think that is *prima facie*.

Mr. HUGHES: We except.

A. A resolution is passed authorizing the president or other proper officer to sign and the secretary to affix *to* official seal to the instrument.

Mr. HUGHES: I move to strike that out as incompetent, irrelevant and not binding on the libellant.

Motion denied. Libellant excepts.

182 Q. Is it true that on April 26 an application was received from the Third Avenue Railway Company for permission to change their motive power, that is by the board of trustees of the Sun Printing and Publishing Association?

The COURT: I consider that not admissible under objection. The books are here for examination and it can be contested if the other side wish to dispute it.

Mr. HUGHES: My objection is simply on the ground that all these minutes should be admitted.

The COURT: I sustain your objection so far as I have stated. I think on the question whether a certain contract has been made or not the practice of the corporation may be used as far as is customary.

Q. Such has been the usage of the corporation since you have been recording secretary of the corporation, has it not?

Objected to as leading, incompetent, and on the same special grounds as already stated.

Q. That is, such has been the usage and the practice, as you have just described it in your former answer, of the respondent corporation since you have been its recording secretary?

Objected to as leading and incompetent, and on the special grounds already stated.

The COURT: I sustain it as leading. I allow it in substance.

Q. What has been the usage and practice of the respondent corporation in reference to the execution——

The COURT: Ask to what extent that has been the practice and for how long.

Q. To what extent and how long has that been the practice?

Objected to on the same grounds. Objection overruled. Libellant excepts.

183 A. During the time I have been recording secretary.

By the COURT:

Q. That is for nine or ten years?

A. Yes, sir.

By Mr. BARTLETT:

Q. Will you produce the by-laws of the association in force during the months of April and May, 1898?

A. (The witness does as requested.) I have them pasted in here (producing a book) as modified.

Q. Who were the trustees in the months of April and May, 1898?

A. Paul Dana, Thomas Hitchcock, William M. Laffan, Edward P. Mitchell—no, we had no fifth trustee at that time.

Q. Who were the four trustees?

A. Franklin Bartlett.

Q. Mr. Mitchell wasn't made trustee till when?

A. Until the annual meeting in the month of May, 1898; about May 26.

Q. May 23, 1898?

A. May 23, 1898.

By the COURT:

Q. The president was who?

A. Paul Dana.

By Mr. BARTLETT:

Q. And the secretary?

A. Thomas Hitchcock.

By the COURT:

Q. You as recording secretary were always present at the meetings of the board?

A. Yes, sir, as secretary of the board.

Mr. BARTLETT: I offer in evidence the by-laws.

They are marked Respondent's Exhibit A.

Mr. HUGHES: I desire to reserve my objection on the ground that they are not binding on the libellant. As incompetent against the libellant.

Objection overruled. Libellant excepts.

Mr. BARTLETT: There were several other instances in the minutes where the execution of specific papers was authorized during
184 the period but your honor holds all of these are inadmissible.

The COURT: On your part, yes.

Mr. BARTLETT: Then I will not offer them in evidence.

Redirect by counsel for libellant.

By Mr. HUGHES:

Q. Does this book which you have produced contain all the minutes of the board of trustees of the respondent?

A. Do you mean from the organization of the company?

Q. I mean from the first of January, 1898, on?

A. It does.

Q. I find here a meeting on January 25, 1898, and another on February 22d, 1898, and another on March 22d, 1898. Were the meetings of the board of trustees held once a month?

A. They were.

Q. And the next meeting is April 26, 1898, and the next May 24, 1898. Am I correct?

A. Yes, sir.

Q. And the next June 28, 1898?

A. Yes, sir.

Q. The only meeting held in April was that of April 28, was it not?

A. In 1897? Yes, sir.

Q. The only meeting held in April, 1898, was April 26, 1898?

A. On April 26, yes.

Q. I note there a minute that the examining committee reported the books correct to the 23d instant. Who constituted the examining committee?

A. I may be in error, but my recollection says Thomas Hitchcock and Franklin Bartlett.

Q. And the books that are referred to are the books of account of the Sun, are they not?

A. They are.

Q. On May 24, 1898, I notice a minute of a meeting; that was the only meeting held in May that year, was it not?

A. The only board meeting.

Q. That is of the board of trustees?

A. Yes, sir.

Q. I call your attention to the meeting of November 22, 1898, and to the following minute, "Report was received from the auditor that the books were correct to November 1st, 1898."

A. Yes.

185 Q. Who was the auditor?

A. Mr. Wallace.

Q. Appointed by the board?

A. The manager was authorized to engage an auditor at some meeting of the board.

Q. That is Mr. William Laffan?

A. Yes.

Q. And it was customary to have the auditor examine the books and to report the result of his examination to the board?

A. It is.

Q. And such report was made at this meeting of November 22, 1898?

A. As recorded.

Q. And the books referred to are the books of account of the Sun?

A. Yes, sir.

Q. As matter of fact, was there any exception taken to that report?

A. They never take exception to a correct report.

Q. Then the report was correct?

A. The auditor said so.

Q. And so accepted by the board of trustees?

A. Yes.

Q. I call your attention to the meeting of October 29, 1898, in these words, "Written report was received from the auditor that he had examined the books from the date of the last examination by the examining committee to the 20th of October, 1898, and found the same correct and payments properly vouched for." Was that report received?

A. Yes, sir.

Q. Was it accepted as a correct report by the board of trustees?

A. Yes, sir.

Q. When was the last examination of the books referred to in that minute?

A. As a matter of recollection I think the previous March.

Q. March, 1898?
A. Yes, sir.
Q. So that this report covered period from March to October 20, 1898?
A. If my first date is right; yes, sir.
Q. Taking the minutes of January, 1898, was an execution of any written instrument brought before the meeting of January, 1898?
A. Not according to the minutes.
Q. Was there in fact that you can recall?
A. I don't recollect now.
186 Q. The next meeting was February 22d, 1898, was it not?
A. Yes, sir.
Q. Was there an execution of any written instrument brought before that meeting?
A. There was.
Q. Do you refer to the execution of a new certificate of stock?
A. I do.
Q. Not to the execution of any written contract?
A. That is all.
Q. A certificate of stock; that is all?
A. Yes, sir.
Q. Nothing else?
A. No, sir.
Q. The next meeting was March 22d, 1898?
A. It was.
Q. Was the execution of any written instrument or contract brought before that meeting?
A. No, sir.
Q. So down to and including April 26th, 1898, the only written instrument which was brought before a meeting of the board of trustees of the Sun from January 1st, 1898, besides this certificate of stock, was the application from the Third Avenue railroad to change its motive power?
A. Yes, sir.

The COURT: When was that?
Mr. HUGHES: April 26, 1898.
Mr. BARTLETT: I object to that unless the minutes are in.

By the COURT:

Q. Was that the next meeting after March 22d?
A. Yes, sir.
Q. At that meeting there was an application from the Third Avenue Railroad Company?
A. Yes, sir.

Mr. BARTLETT: Let us have it in.
Mr. HUGHES: All that is important is in the question.

Q. There was such an application at that meeting by the Third Avenue railroad, was there?
A. There was.

Q. What was done in regard to that?

Mr. BARTLETT: Why not read the whole thing?

187 A. "Application was received from the Third Avenue Railroad Company for permission to change their motive power and on motion of Mr. Hitchcock it was resolved, that said application be hereby granted and that the president be authorized to sign the same and to affix the corporate seal of the association to said instrument."

By Mr. HUGHES:

Q. The next meeting was May 24, 1898?

A. Yes, sir.

Q. Was the execution of any written contract authorized at that meeting? There was a power of attorney appointing Charles R. Parsons to collect moneys due from the city of New York?

A. That is true.

Q. And that is all?

A. There was an authority given verbally.

Q. I am speaking about written contracts. That is all.

A. Yes, sir.

Q. Read it about the power?

A. "On motion the president was authorized to appoint Charles R. Parsons to collect all moneys due or to become due from the city of New York to the Sun or Evening Sun and to affix the corporate seal of this association to the certificate of appointment."

Q. The next meeting was June 28, 1898?

A. Yes, sir.

Q. Was the execution of any written contract authorized at that meeting?

A. No, sir.

The COURT: At what meetings during the year were there any such?

Q. There were none at the meeting of July 6, 1898, the next meeting?

A. No, sir.

Q. None at the meeting of August 23, 1898?

A. No, sir.

Q. Was there one at the meeting of September 27, 1898?

A. No, sir.

Q. Or October 25, 1898?

A. No, sir.

Q. Or November 22d, 1898?

A. No, sir.

188 Q. Or December 27th, 1898?

A. No, sir.

Q. The meeting of December 27th, 1898, there is a minute that Mr. Laffan reported that he had received a certificate from the auditor of the correctness of the books to the 1st of December?

A. Yes.

Q. That report was received and accepted by the board of trustees?

Objected to, that the minutes show what was done.
The COURT: He can read it.

Q. As matter of fact it was the practice of the board of trustees to have frequent reports of examining committees or all committees as to the correctness of the books of account of the Sun, was it not?

A. It is the custom to offer a report at every monthly meeting of the board of trustees.

Q. As to the accuracy of the books of account?
A. Yes, sir.
Q. The by-laws were amended in June 28, 1898, were they not?
A. Yes, sir.

Mr. HUGHES: I offer in evidence the amended by-laws as amended at the time.

They are marked Libellant's Exhibit No. 13, April 17, 1899.

Q. I have called your attention to every written contract the execution of which was brought before the board of trustees of the Sun in 1898, have I, as shown by the minutes?
A. Yes.
Q. During all this time the Sun was doing business?
A. Yes.
Q. Didn't it charter several boats during the Spanish war?
A. No, sir.
Q. Some. What about this *Premier*, do you know anything about that?
A. I paid bills for it.
Q. Any other boat that you paid bills for?
A. Yes.
Q. What other boat?
A. One called the *Carbonaro*.
189 Q. What other boat?
A. That is all I recollect.
Q. Did the payments made for those boats enter into this Spanish war account?
A. Yes, sir.
Q. And the expenses ultimately went to the editorial expense account in the same manner as the yacht *Kanapaha*?
A. In part, yes, sir.
Q. Did the Sun have occasion to take out insurance during the year 1898 on these other vessels?

Objected to as immaterial here.
The COURT: I allow the question.

A. Yes, one that I recollect.
Q. Which one was that?
A. On the *Carbonaro*.

Q. The expenses for premiums went into this same account I suppose?

Objected to as irrelevant and immaterial.
Same ruling. Respondent excepts.

A. Yes.

By the COURT:

Q. Do you mean the "Editorial expense account" or "Spanish war account"?
A. First the "Spanish war account."

By Mr. HUGHES:

Q. Then the "Editorial expense"?
A. In balancing, yes sir.
Q. In the same manner as the expenses of the yacht *Kanapaha*?
A. Yes, sir.
Q. I suppose during the year 1898 reporters were employed from time to time by the Sun?

Objected to as incompetent, irrelevant and immaterial, and as already in evidence.

Q. Under written contracts I mean of course?
A. Not to my knowledge.
190 Q. Do you know what goes on in the editorial department?
A. Only by hearsay.
Q. And only such matters as happen to come to your department in the cashier's office?
A. Yes, sir.

By the COURT:

Q. Did you state whether there was an executive committee or anything corresponding to that sort of body in the Sun? Mr. Laffan is manager, does that mean of the whole concern or only of certain interests?
A. That means manager of the whole concern.

By Mr. BARTLETT:

Q. There was an executive committee at one time?
A. There was, but I don't think in 1898 it was in existence. That is a matter of record however.
Q. When did the auditing committee go out? That was the executive committee?
A. There were two committees, examining committee and executive committee. My recollection is that the examining committee was a subcommittee of the executive.
Q. When was an auditor substituted for the examining committee?
A. At the close of the fiscal year of 1897, that is to say in April, 1898, that was the close of the fiscal year.

By the COURT:

Q. Was Mr. Laffan elected manager?

A. He was elected by ballot.

Q. Each year?

A. To the best of my recollection. I may be mistaken about that.

Q. Do these records show that?

A. These records show whatever it is. I may be mistaken about that. Refer to the annual meeting.

Q. When was the annual meeting?

A. You would have to look in May, 1897, for that. I think I am mistaken. The president is voted for by ballot by the board of trustees.

191 By Mr. HUGHES:

Q. How is the manager appointed?

A. My recollection is that he was appointed several years ago the office to hold until the appointment was taken back.

Q. He was in fact general manager of the whole business of the Sun during 1898?

A. He was the manager. When you say "whole business" it covers too much ground.

Q. He managed the financial operation?

A. Particularly the financial or business part of the office.

Mr. BARTLETT: "Mr. Hitchcock was appointed to investigate and report on the subject of surplus earnings." That is April 26, 1898.

Recross by counsel for respondent.

By Mr. BARTLETT:

Q. Isn't it the fact that at the meetings of the Sun when the examining committee was in office that Mr. Hitchcock simply reported that the books had been examined and found correct and that nothing further was said then?

A. At the meeting of the Sun, it was, yes.

Q. Isn't it the fact that the same was true as to the auditor—that is, that Mr. Laffan reported?

A. Yes, he was the mouth-piece.

Q. Was any report ever made by the auditor in reference to the yacht *Kanapaha* or to the alleged charter-parties or agreements of suretyship in reference to the yacht *Kanapaha?*

Objected to as leading and calling for a conclusion; that the question should be what the auditor did report, then whether that included items relating to the *Kanapaha* would be a matter of inference for the court.

Q. What did the auditor report as to disbursements and receipts?

A. As to the correctness of the books as to disbursements and receipts.

192 Q. And that is all?

A. That is all.

Q. His inquiry did not go beyond that, did it?
A. It did not.
Q. Did he ever make any report in reference to the yacht *Kanapaha?*

Objected to as calling for a conclusion as to the effect and contents and purport of the auditor's report. Instead of asking what the report was and leaving the conclusion to be derived from the statement.

By the COURT:

Q. Do you know what he did?
A. I know what he does. He reports in writing to the manager that he has examined the receipts and expenditures and finds the latter properly vouched for and that the books are correct.

By Mr. BARTLETT:

Q. And that is all he did?
A. And that is all he did.

Redirect by counsel for libellant.

By Mr. HUGHES:

Q. I notice in the minute of February 28, 1899, Mr. Laffan reported that he had received certificate from the auditor that the books were correct up to the 25th instant.
A. Yes.
Q. And also March 28, 1899, that Mr. Laffan reported that he had received certificate from the auditor that the books were correct to the 25th instant—that is, March 25, 1899.
A. Yes, sir.
Q. On that report a dividend was declared, was it not?

Objected to as immaterial and irrelevant whether the dividends were paid in March of this year or not.

Q. I want to show that you acted on that report.
A. No, sir, we did not.
193 Q. Read the resolution that was passed.

Objected to. Objection sustained. Libellant excepts.

Q. As matter of fact the report that the books were correct March 25th, 1899, was accepted, was it not?
A. Yes, sir.
Q. And the report made was the usual report showing the receipts and expenditures?
A. The report was the usual report saying the receipts and expenditures were correctly entered in the books of account.
Q. Down to that time?
A. Yes, sir.
Q. Whose handwriting is this on Exhibits 3, 4, and 5 in pencil?
A. I don't know.
Q. Did you ever see it before?
A. No, sir.

SIDNEY CHUBB, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. What is your business?
A. At present marine underwriter, member of the firm of Chubb & Son, 5 and 7 South William street, city.
Q. You are a marine underwriter in this city?
A. Yes, sir.
Q. And you were such in the year 1898?
A. Yes.
Q. And in 1898 you effected the insurance on the yacht *Kanapaha*?
A. Our firm did.
Q. Have you the policies of insurance here?
A. I have some 20 original policies covering both the physical and war risks on the *Kanapaha* for two periods of two months each. From April 2d, 1898, to June 2d, 1898, first period.
Second period from June 2d, 1898, to August 2d, 1898, each in the sum of twelve thousand pounds sterling.
In addition we have received some five other policies cov-
194 ering extension of the last period of one month, namely, from August 2d to September 2d, 1898.

By Mr. BARTLETT:

Q. Why are you reading?
A. Because I can't carry figures in my head. These last five policies are not in our office, we receive them, but we don't find them.

By the COURT:

Q. Did all the policies of which you have any knowledge expire on the 2d of September?
A. The 2d of September, I know that, yes, at noon New York time.

By Mr. HUGHES:

Q. These are the policies that you now produce?
A. Yes. I think there are twenty of them if I didn't make a mistake in counting them. They are divided into physical hazard and war hazard or risk.
The COURT: How do they run?
The WITNESS: Account of C. T. Bowring & Co.
Q. Who are they?
A. A large firm of insurance brokers, and I think ship agents on the other side in London, England.
Q. With whom you correspond?
A. With whom we correspond very largely.

By the COURT:

Q. Are the insured stated to be Bowring?
A. It would always be in English practice.

Q. In this case in all these policies are C. T. Bowring named as the insured?

A. I haven't looked at them, but I have no doubt it is so. "C. T. Bowring & Co., or—as agent." They are all in substance in the same form.

Q. Read it.

A. "C. T. Bowring & Co., or—as agents as well in their own name as for and in the name and names of all and every other person or persons to whom the same doth, may or shall appertain in part, or in whole, doth make insurance and cause themselves, and
195 they and every of them, to be insured, lost or not lost, at and from"—that is the end of the printed form.

Q. And that is the form in all?

A. If it is not in the same words it is substantially the same in all. I think it is the same words.

By Mr. HUGHES:

Q. Have you produced the correspondence you have relative to the effecting of this insurance?

A. With whom?

Q. With any person.

A. I have here all our letters to Bowrings.

Q. Have you here the instructions which you received for such insurance, or your firm, from the New York Sun?

A. They were all oral as far as I know. I find we have but one letter on the file, which has no reference to the taking of the insurance, that is after the insurance was effected. I think it has to do with premiums.

Q. Is this the only letter that you have from the Sun?

A. This is the only one I find or found any trace of. It is dated July 12, 1898.

Q. And you received this letter on or about that date?

A. Yes, sir, I think the same date.

Q. And it relates to this insurance upon the yacht *Kanapaha*?

A. To some of these policies produced.

Mr. HUGHES: We offer the letter in evidence.

Objected to as irrelevant, immaterial and incompetent and improper; and that respondents cannot be bound by letters by the cashier unless it is within the scope of his power.

The COURT: I admit it.

Respondent excepts.

It is marked Libellant's Exhibit No. 14, April 17, 1899.

Q. Have you produced your letter-press book of letters written by your firm to the Sun Printing and Publishing Association relative to the insurance on the yacht *Kanapaha*?

A. I now produce it.

196 Q. Under what date?

A. The first one is April 7, 1898.

Q. Was the original of that letter sent to the Sun?

A. I have no doubt it was.

Objected to.

Q. Is the signature of that letter the signature of your firm?
A. It is.

Q. You have no doubt, have you, that that letter was sent to the Sun?

A. It ought to have been sent and I assume that it was sent.

Mr. HUGHES: I offer the letter in evidence.

Objected to as incompetent, irrelevant, improper and immaterial; and on the specific ground that it should be shown to have been sent; and as not the best evidence; that is a copy.

Mr. HUGHES: I give notice to the other side to produce the original of the letter dated April 7, 1898, addressed to the Sun Printing and Publishing Company of New York city, by Chubb & Son.

Mr. BARTLETT: The fact is that that boat was insured by those gentlemen, not in the name of the Sun, but by some insurance gentlemen.

Mr. HUGHES: The objection that I have not the original of the letter here fails if I give notice that I want the original produced.

The letter-press letter is marked for identification Libellant's Exhibit No. 15.

By the COURT:

Q. Do you know who had the personal interviews with any person in behalf of the insurance of the vessel?
A. Certainly I do.
Q. Who did?
A. My brother, the head of the firm. I had nothing to do with it except I may have heard part of it. I know where such were because I overheard part of it, but I took no part in it.
Q. Do you know what person in behalf of the insured was making negotiations?
A. No, sir, I do not.

197 By Mr. HUGHES:

Q. Have you other letters written by Chubb & Son to the Sun?
A. I have copies of them, I think one or two or three more, in the letter-press copies.
Q. Under what dates?
A. Under date June 3, 1898.

The COURT: Mr. Chubb cannot testify, and he has nothing here to put anything in evidence, and I am not going to mark any more things for identification. I stop right here. I don't take any more time for anything that you have not the evidence here to supplement. When you get the evidence you can use these things just as well.

Mr. CHUBB: Some of these twenty policies relate only to the physical hazards and the others exclusively to the war risk, but the description of the assured is substantially the same in all. The fol-

lowing is a fair sample of all. I think in legal effect they are *the* exactly the same:

"Whereas it hath been proposed to the Tokio Marine Insurance Company, Limited, by C. T. Bowring & Co., as well within own name as for and in the name and names of all and every other person or persons to whom the subject-matter of this policy does, may or shall appertain in part or in all, to make with the said company the insurance hereinafter mentioned and described, now this policy witnesseth that in consideration of the said person or persons effecting this policy promising to pay to the said company a premium at and after the rate of 25 shillings per cent. for such insurance, the said company takes upon itself the burden of such insurance to the amount of six hundred pounds, and promises and agrees with the assured, their executors, administrators and assigns in all respects truly to perform and fulfil the contract contained in this policy."

By Mr. HUGHES:

198 Q. These policies that you have produced are covered by the bills for premiums which have been marked here Exhibits 8, 9 and 10?

Objected to as leading and as suggesting the answer to the witness and therefore improper. Objection overruled. Respondent excepts.

A. Yes, they covered five months.

By the COURT:

Q. Can you state whether the premiums in these policies are the premiums covered by those?

A. They are. The two original periods of two months each and the one extension of one month, these are the bills for them.

HENRY G. PAINE, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. What is your business?

A. Managing editor of Harper's Weekly.

Q. Do you know Mr. Kellogg of the Sun?

A. I do.

Q. What is Mr. Kellogg's employment on the Sun?

A. I don't know that I can give information on that.

Q. Do you remember arranging for two reporters to go on the yacht *Kanapaha* in the year 1898?

A. I remember going to the Sun office to make such arrangement.

Q. When was that?

A. I can't give you the exact date of that.

Q. About what time?

A. I looked that up a day or two ago and the dates have slipped my mind, but it was two days before the yacht sailed.

Q. Did you go to the Sun office personally?
A. I did.
Q. Whom did you see there?
A. I saw Mr. Chester Lord.
199 Q. Had any one referred you to Mr. Chester Lord?
A. I can't recollect.
Q. Hadn't Mr. Kellogg?

Objected to, the counsel suggesting answers to the witness.

Q. Mr. Kellogg is connected with the Sun?

By the COURT:

Q. Do you know how you came to see Mr. Lord?
A. I do, yes, sir; because I heard that they were going to send the yacht, or a yacht.

Mr. BARTLETT: I move to strike that out.

By Mr. HUGHES:

Q. Did you see Mr. Lord?
A. I did.
Q. State what was said and done between you and Mr. Lord at that time.

Objected to as improper, irrelevant and immaterial, and as not binding on the respondent.
The COURT: I shall have to take the conversation.
Respondent excepts.

A. I asked Mr. Lord if he was going to send a yacht, that I had so heard, and he said that was the case; and then I asked permission to send a——

Mr. BARTLETT: I want to make the further objection: What difference does it make? It is in evidence already that Lord signed the charter-parties.

The WITNESS: And I asked permission to send an artist on the yacht to act as artist and correspondent for Harper's Weekly.

By the COURT:

Q. Was that all the conversation?
A. Mr. Lord said that would be all right, that our man could go.

By Mr. HUGHES:

200 Q. Was anything said about arranging for the price or compensation?

Objected to as improper, irrelevant and incompetent and as suggesting the answer.

A. No arrangement was made as to price.
Q. Was anything said as to with whom the arrangement as to price should be made, in that conversation?

Objected to. Objection overruled. Respondent excepts.

A. There was.
Q. State what it was, please?

The same objection, ruling and exception.

A. I started, I brought up the subject of terms and Mr. Lord said, as near as I can recollect, "Mr. J. Henry Harper and Mr. Laffan are very good friends, aren't they?" I said I believed they were. Mr. Lord said, "Well, it is all right to let the man go on the boat but as to terms, wouldn't it be well to leave the matter for them to settle between themselves; any arrangement that they make will be satisfactory to you and of course it will be satisfactory to us."

Q. That is to Mr. Laffan and Mr. Harper?
A. It would be satisfactory, he said, "to you and to us;" I don't know whom he meant.
Q. He meant to leave it to Mr. Laffan and Mr. Harper to arrange about the price?
A. Yes, sir.
Mr. BARTLETT: How can he say?
Q. That is what was said, wasn't it? I mean, in testifying you would leave it to them to make the arrangement. What did you mean by "them"?

Objected to as to what the witness meant. That the language speaks for itself.
Objection sustained. Libellant excepts.

201 Q. Did men from Harper's Weekly go on the boat *Kanapaha?*

The COURT: I exclude that.

By Mr. BARTLETT:

Q. Don't you know as matter of fact at that time that Mr. William Laffan was in Europe?
A. He was in Europe.

By Mr. HUGHES:

Q. I understand that what Mr. Lord said was that at some subsequent time the compensation could be arranged for by Mr. Laffan; wasn't that it?

Mr. BARTLETT: I ask that the testimony be read.
The stenographer here reads the testimony of witnesses as follows:
"Well, it is all right to let the man go on the boat, but as to terms wouldn't it be well to leave the matter for them to settle between themselves? Any arrangement that they make will be satisfactory to you and of course it will be satisfactory to us."
Question withdrawn.

J. HENRY HARPER, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. You are publisher of Harper's Weekly and a member of the firm of Harper & Brothers?

A. Yes.

Q. You have heard the testimony of Mr. Paine in regard to his conversation with Mr. Lord as to having a representative of Harper's Weekly on the yacht *Kanapaha*, you were in court just now and heard that testimony?

A. Yes.

202 Q. Did you subsequently see or have any correspondence with Mr. Laffan of the New York Sun regarding the compensation to be paid?

A. I did.

Q. Was the communication you had with Mr. Laffan oral or written?

A. It was partly written and partly oral.

Q. Did you receive a bill from the Sun for such compensation?

A. I did.

Q. Subsequent to that did you have an interview with Mr. Laffan?

A. No.

Q. You simply had correspondence with him?

A. I had correspondence, yes.

Q. Have you the letters that you received from Mr. Laffan here?

A. I wrote to Mr. Laffan and he simply sent a bill. He sent a bill to the office for our use of the yacht, and then I wrote.

Q. That is, from the Sun?

A. Yes. I don't know whether that came from Mr. Laffan personally; it came from the Sun office. And I wrote to Mr. Laffan in view of the arrangement that was suggested—I being away at the time and so was Mr. Laffan; he was in Europe—and he said it would be all right. That was all that passed between Mr. Laffan and myself.

Q. You have letters from Mr. Laffan here, have you not, relating to the matter?

A. I have not.

Q. Haven't you produced letters here?

A. I never received any.

Q. From the Sun; didn't you receive any letter from the Sun or from Mr. Laffan?

A. Not to my knowledge.

Q. Or didn't you receive any letter from any person regarding what should be paid for these privileges?

A. Not to my knowledge.

Q. Haven't you any correspondence at all in court relative to the matter?

A. I have a purely personal letter.

Q. From Mr. Laffan?

A. From myself to Mr. Laffan. I don't think it ought to be produced, but Mr. Murray told me I must have it here.

203 Mr. BARTLETT: I submit it to his honor if there is any doubt about it.

Q. Have you got any letter from Mr. Laffan?
A. None whatever.
Q. Did you have an interview with Mr. Laffan after the writing of the letter to which you refer?
A. No, he simply called me up on the telephone and said it was all right.
Q. What was all right?
A. I said I wrote to him.
Q. About the compensation to be paid?
A. I wrote to him a personal letter in reference to the payment.
Q. For the men on the *Kanapaha?*
A. I don't think anything was said about men; I didn't know we had men.
Q. For the privileges that were given to Harper's Weekly in connection with the yacht?
A. Of course it was based on that.
Q. And was that adjusted between you and Mr. Laffan?
A. It was.

THOMAS HITCHCOCK, being duly sworn and examined as a witness for the respondent, testifies:

By Mr. BARTLETT:

Q. You reside in this city, No. 8 East 29th street?
A. Yes, sir.
Q. Were you in the year 1898 one of the trustees of the respondent, The Sun Printing and Publishing Association?
A. I was.
Q. An officer of said association?
A. I was.
Q. What officer?
A. Secretary.
Q. In the months of April and May, 1898, you were such secretary, that is, of the Sun Printing and Publishing Association?
A. I was.
Q. Did you at any time execute any charter-party or agreement of suretyship in reference to the yacht *Kanapaha?*
A. I did not.

204 Mr. HUGHES: I object, on the ground that it is irrelevant and immaterial. That there is no suit here on a charter-party executed by Mr. Hitchcock and no pretence that there was any.

Objection overruled. Libellant excepts.

Q. What was the usage and practice of the Sun Printing and Publishing Association about the execution of instruments?

Objected to as incompetent and irrelevant and not in any way binding upon the libellant.

Objection overruled. Libellant excepts.

Q. I mean as to their authorization by the board of trustees and affixing the corporate seal. Were such matters brought up before the board of trustees?

Objected to further on the specific ground that any instructions or communications, whether matters of practice or otherwise, between the board of trustees and particular individuals are not competent as against this libellant.

Objection overruled. Libellant excepts.

A. The secretary was, in case of any instrument being directed or approved, to affix the seal on behalf of the corporation by a vote by resolution.

Q. By a vote of the board of trustees?

A. Yes, sir.

Q. Do you remember a certain alleged charter-party for the yacht *Kanapaha* being brought to you in the month of April, 1898?

A. I do.

Q. Who brought it to you?

A. Mr. Lord.

Q. Mr. Chester S. Lord?

A. Mr. Chester S. Lord.

Q. What did he ask you to do?

Objected to as immaterial and irrelevant. That any transaction between Mr. Lord and Mr. Hitchcock is not binding on the libellant.

Objection overruled. Libellant excepts.

A. He asked me to execute on behalf of the Sun Association, that paper which he showed me.

205 Q. Was it a paper like this I show you?

A. I didn't look at it very carefully.

Q. It was an alleged charter-party?

Objected to, that unless it was the paper in question or substantially the paper in question, it should be identified.

A. It was substantially a paper chartering a steamer and giving a bond for the value of it, something of that kind. I looked it through carefully or carelessly, and——

Q. Read it through and see if it was in substance like that?

A. The one that I particularly objected to was a bond of some kind.

Q. Was it this one in substance?

A. It was in substance. I can't remember it, but it was in substance.

Q. I refer to No. 3 for identification which you say was in substance one of them. Was that in substance the other?

A. This one I remember perfectly. This one I distinctly refused.

Q. That is 12 for identification. You declined to execute that?

Mr. HUGHES: I move to strike out the statement in the last answer, "This one I refused," referring to Exhibit 12, as not responsive.

Motion denied. Libellant excepts.

Q. You refused to execute that?

Objected to as leading, incompetent and irrelevant, and not binding on the libellant.

Objection overruled. Libellant excepts.

A. Yes.

Q. Do you know anything about the execution of these charter-parties and agreements of suretyship by Mr. Lord, to all of them?

Mr. HUGHES: You have in your hand 3 and 12.

206 Q. 3, 12, 4 and 5. Do you know anything about that?

Objected to as irrelevant, incompetent; that the witness's knowledge or want of knowledge is immaterial, and as calling for a conclusion.

Objection overruled. Libellant excepts.

A. I don't know anything about it.

Q. Did you ever authorize Mr. Chester S. Lord, either as an officer of the corporation or an individual, or as a trustee, to execute any charter-party for the hiring or demise of the yacht *Kanapaha* or any agreement of suretyship in reference thereto?

Objected to as incompetent, irrelevant and as calling for a conclusion. And further, that the question whether this witness authorized anybody is not pertinent to the issue.

Objection overruled. Libellant excepts.

Q. As an officer of the corporation, as secretary thereof, or in any capacity?

Objection renewed.

Same ruling and exception.

A. I never did.

Q. Throughout the year 1898 you were one of the trustees of the Sun Printing and Publishing Association?

A. I was.

Q. And I believe you attended every meeting of such board of trustees?

A. I did.

Q. At any meeting of the said board of trustees or of the directors of the Sun Printing and Publishing Association was any resolution or motion passed authorizing the execution of any charter-party of this yacht *Kanapaha*, or of any agreement of suretyship in reference thereto?

Objected to on the ground that the question has been already answered, and on the further ground that it is incompetent,
207 and that any action of the board is not binding on the libellant.

Objection overruled. Libellant excepts.

A. There never was.

By the COURT:

Q. Was the subject ever brought up in discussion at any meeting of the board?

Libellant excepts.

A. It never was.

Cross-examined by counsel for libellant.

By Mr. HUGHES:

Q. In what time in April did you have this conversation with Mr. Lord about the signing of the charter-party and bond substantially similar to Exhibits 3 and 12 for identification?

A. About the time of the breaking out of hostilities between this country and Spain.

Q. Do you mean about the 20th of April?

A. I couldn't fix the date excepting that—I couldn't fix the date; it was about the time that the war began.

Q. About the time the war was declared?

A. About the time it seemed to be imminent.

Q. Was it the beginning of the month of April?

A. I couldn't say without looking at the newspapers.

Mr. BARTLETT: You can look at the bond if you desire to refresh your recollection.

The COURT: No, let counsel examine him first.

Q. You were aware that the *Kanapaha* was delivered to the Sun Printing and Publishing Association early in April, 1898, were you not?

A. No, I didn't know anything about it.

Q. Don't you know it now?

A. I only know it by hearsay.

Q. Have you ever known it?

A. I have never known it, no.

Q. You knew that the *Kanapaha* was used by the Sun?

A. I didn't know anything about it.

208 Q. Don't you know it now?

A. I know it now from what you say to me and by this suit.

Q. How recently did you know it?

A. I didn't know it until I heard this vessel was lost, then I saw it in the paper and didn't at all connect it with the Sun.

Q. It is a fact that the boat was used by the Sun?

A. Not to my knowledge.

Q. It is a fact that the yacht was delivered to the Sun, wasn't it?

A. I don't know anything about it; I never saw it.

Q. You were aware that the Sun had boats used during the Spanish war for purposes of observation?

A. Yes.

Q. Did you know what boats they were?
A. No.
Q. Did you know how many there were?
A. No.
Q. Did you know who had obtained them?
A. No.
Q. It was generally known in the Sun office, was it not, that there were boats used by the Sun to obtain information as to the progress of the war?

Objected to as incompetent, improper and irrelevant and immaterial, and on the specific ground that it cannot be within the knowledge of the witness what was generally known by other men.

The COURT: Isn't it admitted that the Sun was making use of this yacht?

Mr. BARTLETT: It is, in our answer.

The COURT: I think it is useless if that has been admitted. I exclude that.

Libellant excepts.

Q. What was Mr. Laffan's connection with the Sun?
A. His title is business manager.
Q. Did he have charge of the financial operations of the Sun business office?
A. The money business, yes, sir; receiving money.
Q. Did you ever hear of the boat *Premier?*
A. No.
Q. Being used by the Sun?
A. No.
Q. Or the *Carbonaro?*
A. No.

209 Q. Did you ever know that the representatives of other newspapers were allowed to go on the Sun's boat to get information?
A. I never heard anything about it at all.
Q. Did you ever hear that the Sun received moneys from other newspapers for giving privileges to reporters on the yacht?
A. That is not my department.
Q. What is your department?
A. Writing financial articles—business.
Q. Do you mean the financial page of the Sun?
A. The Monday morning article I write.
Q. And you confine yourself to that department?
A. I confine myself to that department and writing occasionally editorials on that subject.
Q. You don't concern yourself with the means taken by the editorial department to acquire news?
A. I do not.
Q. Or the facilities for obtaining information for such events as the Spanish war?
A. I do not.
Q. And during the year 1898 you didn't have occasion to familiar-

ize yourself with what was being done by the Sun in connection with the Spanish war?

A. I had no occasion to.

Q. You verified the answer of this case, didn't you?

A. I suppose so, under advice of counsel.

WILBUR J. CHAMBERLIN, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. You are employed by the New York Sun?

A. Yes.

Q. As a reporter?

A. Yes, sir.

Q. And correspondent and have been for some time?

A. Yes, sir.

Q. And were continuously through the year 1898?

A. Yes, sir.

Q. Do you know the yacht *Kanapaha?*

A. Yes, sir.

210 Q. When were you first detailed to go on the yacht *Kanapaha*; if you were?

A. Early in June, I think.

Q. Hadn't you had anything to do with the yacht *Kanapaha* before June, 1898?

A. In April some time I was asked to find a boat.

Q. Who asked you to find a boat?

A. Mr. Lord.

Q. Mr. Chester S. Lord?

A. Mr. Chester S. Lord.

Q. And was that before the boat left New York?

A. That was before the boat left New York.

Q. How long before the boat left New York?

A. A few days, not very long.

Q. Two or three days?

A. I think a little longer than that, perhaps a week.

Q. Had you had any conversation with Capt. Packard with regard to the boat?

A. I had not.

Q. When did you first meet Capt. Packard?

A. The day before the boat left.

Q. And where did you meet him?

A. I don't recollect.

Q. Didn't you go down with Capt. Packard to the boat?

A. No, I met Capt. Packard over in Tebo's basin.

Q. Where the boat was lying?

A. Where the boat was lying.

Q. In Manning's basin?

A. No, I think it was Tebo's.

Q. What did you do when Mr. Lord spoke to you first—some days before, as I understand it—with regard to finding a boat?

Objected to as immaterial, that the boat was delivered, and that is enough.

By the COURT:

Q. Did you find this boat?
A. I found this boat, yes, sir.

By Mr. HUGHES:

Q. With whom did you communicate with regard to it?
A. With Mr. Lord.
Q. Who else?
A. I think that ended my connection with it. I told Mr. Lord——

211 Q. To find the boat?

A. To find the boat I communicated with the various yachting agencies.

By the COURT:

Q. With what other persons, if any, on the part of the Sun Association did you communicate besides Mr. Lord?
A. With no other.
Q. You communicated with Mr. Flint?
A. I saw Mr. Flint, yes, sir.
Q. Charles W. Flint?
A. Yes, sir.

Objected to as to any testimony about Mr. Flint unless it appears it is material in some way.

Q. Do you know how Capt. Packard's services were secured?

The COURT: I exclude that.

Q. After you found this boat, to whom did you report that?
A. To Mr. Lord.
Q. Did you receive instructions to go down to arrange for putting the boat in commission and provisioning the boat?
A. I don't think I did, I think that was done by somebody else, who it was I don't know.
Q. Do you know by whom it was done?
A. No, I do not.
Q. Do you recall positively that you did not arrange for the coaling of the boat?
A. I do not.
Q. You are not certain about that?
A. I am not certain about that.
Q. How about the provisions?
A. I don't think I had anything to do with that.
Q. When you visited the boat at Tebo's dock was she then being put in commission?
A. She was then being put in commission.
Q. Wasn't it being put in commission under your instructions?
A. I can't answer that.

Q. Why not?

A. I don't recollect. Either my instructions or Mr. Lord's instructions.

Q. One of the two?

A. One of the two.

212 Q. You don't know which?

A. I don't know which, I don't recall now.

Q. Do you know White & Co.?

A. No, I do not.

Q. You don't know who they are, what business they do?

A. No.

Q. Did you make any arrangements for paying Capt. Packard?

A. I did not.

Q. At any time?

A. No, sir.

Q. Or for paying the crew for any provisions?

A. Well, not until I went on board the boat.

Q. When did you go on the boat?

A. I think it was about the middle of June, I don't recollect the date.

Q. Was Capt. Packard on the boat?

A. Capt. Packard had left the boat.

Q. When you went on?

A. Yes, sir.

Q. And Capt. Atkinson was on the boat?

A. No, Capt. Seaman.

Q. You arranged for making payments to him from time to time, did you not?

A. I paid Capt. Seaman; I personally paid Capt. Seaman, and sent him north, paid his fare.

Q. Between this time when you went down to Tebo's dock and saw the boat and the time that you went on the boat in July or June, had you anything to do with the *Kanapaha?*

A. Nothing at all.

Q. Will you state what you did do when you went down to Tebo's dock?

A. I think I went down with Mr. Anderson just to see how the work was getting on.

Q. That is Mr. Anderson, of the Sun?

A. That is Mr. Anderson of the Sun.

Q. Mr. H. M. Anderson?

A. Yes.

Q. I show you a paper marked Exhibit 4 for identification and call your attention to the words, "Chester S. Lord for Sun Printing and Publishing Company" or "Association." Are those words in the handwriting of Mr. Chester S. Lord?

Objected to.

213 Q. Are you familiar with Mr. Chester S. Lord's handwriting?

A. I am familiar with his signature.

Q. Have you seen him write?
A. I think I have.
Q. Will you state whether those words that I have read to you are in his handwriting?

Objected to on the ground that one witness has already been examined and made libellant's own witness on the signature, and that the witness has stated the signature was Mr. Lord's handwriting and that he didn't think the rest of it was.

Mr. HUGHES: He said he didn't know and wouldn't say one way or the other.

The COURT: If Mr. Chamberlin knows Mr. Lord's handwriting he can say as to each part of that signature.

A. The signature is Mr. Lord's, the rest of it does not look like his handwriting.
Q. Will you say it is not?
A. No, I will not.
Q. I show you the words "for the Sun Printing and Publishing Company," in Exhibit 3 for identification, after the words "Chester S. Lord" in the superscription, and ask you if those words are in Mr. Lord's handwriting.

Mr. BARTLETT: We admit the papers were signed by Mr. Chester S. Lord. There is no doubt about it.

A. It doesn't look like his handwriting. The signature is his.

By the COURT:

Q. Do you say the same as to 4 as to 3?
A. Yes, sir.

By Mr. HUGHES:

Q. Will you say the additional words are not in his handwriting?
A. I will not.
Q. Will you say the same as to Exhibit 5 for identification?
A. Yes, sir.
Q. And the same as to Exhibit 12 for identification?
A. Yes, sir.

214 Q. Do you know in whose handwriting the words in pencil endorsed on the covers of these papers 3, 4 and 5 are?
A. I don't recognize it.
Q. After you went on the boat in June, 1898, did you give instructions with regard to the movements of the boat, the yacht *Kanapaha?*
A. Yes, sir.
Q. And you were in charge of her, were you not?
A. Yes, sir.
Q. For how long a time?
A. Until the 5th of September, when she was wrecked.
Q. Were you in telegraphic communication with the Sun during that period?
A. Yes, sir.

Q. And corresponding with the Sun?
A. Yes, sir.
Q. And were your expenses paid by the Sun?
A. They were paid by drafts on the Sun.
Q. Did you obtain moneys from the Sun for the expenses of the boat?
A. I obtained moneys by draft.

By the COURT:

Q. You got moneys for the boat by draft on the Sun?
A. I got moneys for myself by drafts on the Sun, and I paid the expenses of the boat.

By Mr. HUGHES:

Q. And reimbursed yourself through the drafts on the Sun?
A. Yes, sir.
Q. Was the boat during the time that you were on in constant use by the Sun for the purpose of obtaining information in regard to the conduct of the war?

Objected to as to the words "by the Sun."

A. She was in use except once or twice, when she was laid up for repairs.
Q. And who paid for the repairs?
A. I did.
Q. And you were reimbursed by drafts on the Sun?
A. Yes, sir.
Q. And where were those repairs put on?
A. I think in Kingston once.
Q. Kingston, Jamaica?
A. Kingston, Jamaica. And she had got so slow that she
215 was almost useless and we pulled her out at St. Thomas and had her fixed up a little.
Q. She wasn't so slow but what she could go 12 miles an hour?
A. Oh, yes, she didn't go but about 7 miles an hour going over to St. Thomas.
Q. Until you cleaned her bottom?
A. Until we cleaned her bottom, then she went from 11 to 12, yes.
Q. What was the occasion of these repairs?

The COURT: I don't believe we want that.

Q. Do you know that the Sun had other boats during this period in use in Cuban waters?

Objected to as irrelevant and immaterial.

By Mr. BARTLETT:

Q. Did you have anything to do with any other boats?
A. I had charge of the Sun's work down there.

By Mr. HUGHES:

Q. What other boats did you have to do with?
A. The *Premier*.
Q. What was the *Premier?*

Objected to as irrelevant and immaterial.

By the COURT:

Q. What was she engaged in?

Mr. BARTLETT: We except.

A. For the Sun? She was a dispatch-boat.

By Mr. HUGHES:

Q. Cruising about to watch the movements of the fleet and so on?
A. Do exactly what other dispatch-boats did, get the news.
Q. Just what the *Kanapaha* did?
A. Yes, sir.
Q. How long was she used for the Sun?

Objected to as irrelevant and immaterial.
Objection overruled. Respondent excepts.

216 A. I don't recollect.

By the COURT:

Q. During what period?
A. I don't recollect.

By Mr. HUGHES:

Q. Was it between June and September, or as early as April?
A. It was in June and I don't think it continued to September.
Q. It was during that summer?
A. It was during that summer, yes, sir.
Q. Did you have anything to do with the *Carbonaro?*
A. When she came down there I had charge of her.
Q. For the Sun?
A. Yes, sir.

By the COURT:

Q. When did she come down?
A. She came down in August, I think, perhaps the latter part of July.

By Mr. HUGHES:

Q. Was she used by the Sun as a dispatch-boat?
A. Yes, sir.

By Mr. BARTLETT:

Q. Did you pay the expenses or some of the expenses that were incurred in connection with the *Premier* and *Carbonaro?*
A. Whenever I was on board and she was in port.

Q. And you were reimbursed in the same manner as you were for the expenses on the *Kanapaha*, by drafts on the Sun?
A. Yes, sir.
Q. Do you know what compensation was to be given to Capt. Packard?
A. I do not.
Q. Are there any statements or reports of yours to the Sun which show anything in connection with payments to Capt. Packard?
A. No, sir.
Q. He had gone and the matter was closed up before you took charge of the boats, as I understand it?
A. Yes, sir.

217 Cross-examined by counsel for respondent.

By Mr. BARTLETT:

Q. Were you on board the yacht when she was lost?
A. I was.
Q. What date was it?
A. The 5th day of September, 1898.

By the COURT:

Q. Where?
A. Off Nuevitas.

By Mr. BARTLETT:

Q. On the coast of Cuba?
A. On the coast of Cuba.

By the COURT:

Q. What coast is that?
A. On the north coast towards the eastern end.

By Mr. BARTLETT:

Q. Did she run on a reef?
A. Yes, sir.
Q. Was the water smooth at the time?
A. Yes, I think it was smooth, there was a little swell on it.
Q. Was there any indication to the eye of the presence of the reef?
A. None at all.

Mr. HUGHES: We object to that. We understand that if a boat runs on a well-known reef the question is not important whether the witness happened to see it or not.
The WITNESS: The water was practically smooth.

Q. And there was no indication——
A. And there was no indication at all of the reef. It was dark.

By the COURT:

Q. What time of day or night was it?
A. It was shortly after seven o'clock, I think about half past seven.

By Mr. BARTLETT:

Q. Was there anything of any sort, any buoy or any light
218 vessel to indicate to you or those on board the *Kanapaha* the presence of the reef?

Objected to on the same ground. Objection overruled. Libellant excepts.

A. No, sir, there was nothing that I could see.
Q. The surface of the water was unbroken at the time?
A. It was.
Q. How far was the reef from the shore?
A. I should think about three miles. I didn't see it until next day.
Q. Were there two lights in the neighborhood on a shoal?
A. There ought to have been two lights.
Q. How far—was one at the entrance of Nuevitas harbor?
A. Yes, sir, one was at the entrance of the harbor.
Q. And the other opposite on Maternillos point?
A. It was a point beyond.

By the COURT:

Q. You say there ought to have been two lights?
A. Yes, sir, I say there ought to have been two lights; the light-houses were there but the lights were not.

By Mr. BARTLETT:

Q. The lights were not burning that night?
A. The lights were not burning that night.
Q. You were on deck?
A. I was on deck, I had just left the br. ge.
Q. At the time of the accident?
A. Yes, sir.
Q. And you could have seen the lights had they been burning?
A. Oh, I was told that I could have seen them.
Q. They were in plain sight from the vessel next day?
A. Next day they were in plain sight from the vessel.
Q. That is the light-houses were?
A. Yes, sir.
Q. Had these lights been destroyed?
A. One of the lights I was told the next day had been destroyed.

219 Mr. HUGHES: I move to strike that out as hearsay.

Q. Did you examine?
A. I sent the captain to examine.

Mr. HUGHES: I move to strike that out.

By the COURT:

Q. Was the weather at the time clear or how when you ran on the reef?
A. It was clear, yes, sir, there was no wind.

By Mr. BARTLETT:

Q. On the chart which was on the vessel at the time was this reef of rocks shown?

Mr. HUGHES: We object. The chart should be produced.

Mr. BARTLETT: The captain has shown it was not on the chart.

The COURT: Are you going to put in evidence to the contrary?

Mr. MURRAY: The captain said it was not down on the chart that he had; but it was shown on other charts. To that extent he has weakened the force of his testimony. We shall offer nothing but documentary evidence.

The COURT; Who supplied the charts for this vessel?

Mr. MURRAY: It was a bare boat charter and the yacht was to be put in commission by the charterer.

Mr. HUGHES: We think the chart should be shown.

Q. Were not all the charts on board lost with the vessel?

A. Yes, sir.

Q. Was this reef of rocks shown on the chart which was on the vessel at the time of the accident?

A. It was not.

220 By the COURT:

Q. Do you know what year that chart was of?

A. It was the last chart published before the boat left here. We got an entire new set of charts for West Indian waters.

By Mr. BARTLETT:

Q. It was the last United States chart?

A. It was the last United States chart.

Q. Published prior to the sailing of the boat from this port?

A. That is what we purchased, yes, sir.

Q. Was there a boat coming right along in your course in the rear of your vessel at the time of the accident?

A. There was.

By the COURT:

Q. What was it?

A. The Norwegian *Albis.*

By Mr. BARTLETT:

Q. A steamer?

A. A steamer.

Q. And she was steering the same course astern of you?

A. Exactly.

Mr. HUGHES: That I object to.

Objection overruled. Libellant excepts.

Q. What happened after your boat was stranded, what did she do?

By the COURT:

Q. How far behind you was she?

A. Perhaps five miles or ten miles; it was so dark I could just see her lights.

By Mr. BARTLETT:

Q. Was a boat sent back from your vessel to her?
A. The captain went off in one of the boats.
Q. Capt. Atkinson?
A. Yes, sir.

221 By the COURT:

Q. To signal her?
A. To ask her to stand by until morning. We had signalled her with guns and lights.

By Mr. BARTLETT:

Q. Was there the usual lookout on the vessel at the time of the accident?
A. On the *Kanapaha?* Yes, sir.
Q. Had the captain been on the bridge with you just prior to the stranding of the boat?
A. He had.
Q. And was he standing down on the deck right near the bridge at the time, was he somewheres on the deck?
A. He was on the deck; yes, sir; I think he was just about going on the bridge again. Three of us were standing on the bridge with glasses trying to make out these lights, we ought to have seen them an hour before.
Q. That is, the two extinguished light-houses?
A. Yes, sir.
Q. Was the vessel going at the normal rate of speed at that time?
A. About the normal rate; yes, sir.
Q. About eleven knots?
A. About eleven knots, ten and a half to eleven.
Q. Was the stranding of the vessel caused by the extinguishing of these lights?

Mr. HUGHES: We object to that as calling for a conclusion and as incompetent.

The COURT: I sustain the objection. I think you are entitled to ask him whether he was misled at all as to their position in consequence of the absence of the lights.

Q. Were you misled as to the position of your vessel by the absence of these two lights which should have been burning in the light-house near the entrance to Nuevitas harbor on that night?

Mr. HUGHES: We object to that as immaterial, that this witness was not navigating the vessel.

222 The COURT: He may state what he knows about it. Has the captain been examined on this subject?

By the COURT:

Q. Had you anything to do with the navigation?

A. Nothing at all.

(Balance of testimony to be taken in chambers.)

NEW YORK, *April* 17, 1899.

Testimony Continued in Judge's Chambers.

Present: Mr. Hughes for the libellant; Mr. Bartlett for the claimant.

Mr. HUGHES: Mr. Bartlett, I understand that *subpœna duces tecum* has been served for the production of the letters from Chubb & Sons to the Sun Printing & Publishing Association, under date of April 7, 1898, June 3, 1898, July 12, 1898, and July 29, 1898, and I understand that Mr. —— says that he has made a careful search, and is unable to find those letters.

Mr. BARTLETT: We haven't got them.

Mr. HUGHES: In view of the fact that you are not able to find them, will you accept now an oral notice to produce them so that we may have secondary evidence?

Mr. BARTLETT: We will accept nothing; you had weeks and months to prepare this case for trial.

223 CHAMBERLAIN further examined.

By Mr. HUGHES:

Q. When did you leave the *Kanapaha?*

A. When she was wrecked.

Q. Did you go away after seven o'clock in the evening of September 5th, or half past seven?

A. No, I think it was about two hours and a half or three hours afterwards; whenever the captain directed that everybody should go.

Q. Did you ever return to the yacht?

A. Yes, I was back I think two days afterward, or a day afterward.

Q. When you left the yacht on the evening of the accident was there water in her?

A. I don't know.

Q. Did you take away the log?

A. I don't know that; the captain had all to do with that.

Q. Don't you know, as matter of fact, that the captain did not take away the log?

A. I did not.

Q. Did you have any conversation with him about taking away the log?

A. I did not.

Q. Do you know whether any effort was made to save the charts or log?

A. I don't know.

Q. You have never had any interview with the captain about that?

A. No, I don't know anything about those things. I am not a seaman.

Q. Have you ever seen the log since that time?

A. No.

Q. I mean since the accident? You know what the log is, do you?

A. It is a record of what the boat does on the voyage. I never have seen it; I don't know anything about it.

Q. You have never asked the captain for it?

A. No.

Mr. BARTLETT: Mr. Chamberlain, when Mr. Hughes asks the same question, as he invariably does, the second or third time, don't answer.

Q. What was the last port that you left prior to the accident?

A. Cape Haytien.

224 Q. Do you know how far that is from Nuevitas?

A. No, I do not.

Q. Do you know about how far it is?

A. No, I don't think that I do.

Q. What time did you leave Cape Haytien?

A. We left there about one o'clock—between 12 and 1 o'clock on Sunday preceding the wreck; that was the day before.

Q. Then the wreck was on Monday evening?

A. The wreck was on Monday evening, about 7.

Q. Did you leave between 12 and 1 o'clock that night?

A. No, between 12 and 1 in the afternoon.

Q. Of Sunday?

A. Of Sunday.

Q. What was the weather from that time until the time of the accident?

A. It was very fair.

Q. And the sea calm?

A. The sea was calm. There is always a pretty big roll.

Q. And swell?

A. Swell coming through the Windward passage.

Q. Did you have any fog during that time?

A. I don't think so, I don't remember any.

Q. Do you remember where you were on the morning of Monday, the day of the accident?

A. I do not; I think we had passed the eastern end of Cuba, and I remember the captain was somewhat delighted because the lights were lit all right; he feared the lights would not be lit.

Q. Did he say that to you?

A. He said that to me; he said the lights were lit. He spoke of that particular light.

Q. When did he say to you that he feared they would not be lit on the Cuban coast?

A. I do not think he said he feared they would not be lit; I think he said he was glad they were lit; that was on the morning after we passed the eastern end of Cuba, Cape Maysi, I think.

Q. So that during Monday you were along the coast of Cuba proceeding westwardly?

A. I think so; my recollection isn't absolute about that. We kept pretty well within sight of the land.

Q. Throughout the day?

A. Throughout the day.

225 Q. Do you remember at what time the sun set?

A. No, sir.

Q. About what time?

A. My recollection is about an hour before the wreck, before we ran ashore.

Q. Were you on deck at about that time?

A. It wasn't an hour before we ran ashore, because I was on deck as it became dark; I don't mean on deck, I mean on the bridge, and for some time before that we had been looking through the glasses for these lights; the captain said we ought to see those headlands before it became dark, and we were looking for those.

Q. You had occasion to look at the coast too, didn't you?

A. I don't remember that, I presume we did, I don't know.

Q. You were in sight of land at sunset?

A. I think so.

Q. How long after sunset was it that it became dark as you call it?

A. I don't recollect that, I don't think I noticed the sunset at all.

Q. You hold no master's license?

A. Oh, no.

Q. You have never navigated any boat?

A. Never.

Q. While you directed the movements of the *Kanapaha* indicating what places she should go, everything was entrusted to the captain?

A. Absolutely.

Q. At the time of the accident the captain was Capt. Atkinson?

A. Yes, sir.

Q. And he had been employed and joined the yacht while you were there?

A. He had joined the yacht about the time that I joined her. He had been employed in my absence.

Q. Was he there when you went on board?

A. No, sir, he was not there then.

Q. He came subsequently?

A. I think I put him aboard the boat.

Q. What compensation did he get?

A. I can't tell you absolutely, I think it was $150 a month; I paid him—on behalf of the Sun.

Q. Did you have any instructions about the return of the boat?

226 Mr. BARTLETT: I don't know what you mean, what kind of instructions?

Q. Did you receive instructions as to bringing the boat back to New York before the wreck?

A. No, that was left entirely to me I think; I had been ordered from Ponce to Havana.

Q. Who ordered you from Ponce to Havana?

A. I don't recollect now, it came from Mr. Lord; I got cable instructions.

Q. It came from the Sun office?

A. Came from the Sun office, but I don't know from whom.

Q. You know that much, that it came from the Sun office?

Mr. BARTLETT: Don't be lured by the form of the question.

Q. State the fact whether you do not know that it came from the Sun office?

A. I assume that it came from the Sun office. I got a cablegram ordering me to go to Havana.

Cross-examined by Mr. BARTLETT:

Q. Did I understand you to say on your previous direct examination, that before the yacht *Kanapaha* left this port you or Captain Packard got the latest charts for her?

A. That was my understanding; I think she was delayed a little while until we got the charts. I had just a general sort of direction in the first place about them and Captain Packard I think got the charts himself.

Q. Do you know how many there were?

A. No, I do not.

By Mr. HUGHES:

Q. When you say "we got the charts," whom do you mean by "we"?

A. I mean myself and Mr. Lord from the Sun.

227 ALBERT LEE, a witness called for the libellants, being duly sworn and examined, testified:

By Mr. HUGHES:

Q. What is your occupation?

A. I am editor of Harper's Round Table.

Q. Were you editor of Harper's Round Table in the spring of 1898?

A. Yes, sir.

Q. March of that year?

A. Yes, sir.

Q. State whether or not you went to the office of The New York Sun, the respondent here, to make arrangements to have a representative on the *Kanapaha*.

A. I went there to see Mr. Kellogg, to find out if the Sun was going to have any representative or boat down there during the war.

Q. When you say Mr. Kellogg to whom do you refer?

A. He is the city editor of the Sun.

Q. Mr. Daniel Kellogg?

A. Mr. Daniel Kellogg.

Q. When did you go to see him?
A. It was some time in March; I don't know what day.
Q. State what conversation you had with him about it.

Mr. BARTLETT: I object as irrelevant, immaterial, incompetent and improper, and as having taken place, if such conversation did take place, prior to this charter-party.
Counsel go before the judge.
Objection sustained. Mr. Hughes excepts.

Q. In consequence of the conversation with Mr. Kellogg, the city editor of the Sun, did you have an interview with any one in the Sun office with regard to having a representative on the *Kanapaha?*
A. Yes; I went and spoke to Mr. Chester S. Lord.
Q. Will you state what conversation you had with Mr. Lord?

Mr. BARTLETT: I object as incompetent, immaterial, irrel-
228 evant and improper, and on said ground that it calls for an interview prior to the making of the charter-party.
Counsel go before the judge.
Objection overruled. Mr. Bartlett excepts.

A. As I recollect it, I told Mr. Lord that Harper Brothers would like to find out what arrangements the Sun was making for the naval war with Cuba, and he said that there were plans now on foot for chartering a yacht and sending it down there with representatives on board. I asked if Harper's and the Sun could come to some arrangement by which representatives from Harper's Weekly could go down there, and he said that it could be made if I would speak to the proper persons in Harpers Brothers' and have them come over, some representative person like the editor of the Weekly, that he would be glad to see him. I took Mr. Payne over there the next day and introduced him, Mr. H. G. Payne, the managing editor of Harper's Weekly.

Cross-examined by Mr. BARTLETT:

Q. Are you the editor of the Bazaar?
A. No, sir; of the Harper's Round Table.
Q. What is that?
A. That is a monthly magazine for boys; it used to be Harper's Young People.
Q. How did they find out that you had this conversation with Mr. Lord?
A. They asked me.
Q. When did they come to see you?
A. Oh, no; they found it out this way: I used to be on the Sun myself.
Q. I mean how did Mr. Murray and Mr. Hughes find out?
A. I don't know how Mr. Murray found out.
Q. Do you know how the attorneys on the other side found out that you had that conversation with Mr. Lord?
A. I know that at the time I had the conversation I spoke to Mr. Harriman, of Mr. Murray's office, a year ago.

Q. How did you come to talk with him about it?

A. We lunched together two or three times a week.

229 Q. You lunched with a clerk in Mr. Murray's office?

A. I don't know whether he is a clerk or not.

Q. Is he an attorney in the office?

A. Yes, sir.

Q. At the time you lunched with him you told Mr. Harriman that you had had a conversation with Mr. Lord?

A. I told him that I expected to have charge of running the Weekly's end of the war news because Mr. Payne was going to the war, or I thought he was going at the time.

Q. And that you had had a conversation with one of the editors of the Sun about it?

A. Yes, sir.

Q. And through that conversation with Mr. Harriman you assume you are subpœnaed now?

A. I suppose so, yes.

Q. Did you tell Mr. Harriman all the details?

A. Oh, no; I mentioned them to him, I suppose. Of course he told me that he was interested in this case and I naturally was interested in it and that was the way I knew anything about it.

Q. When did he tell you that he was interested?

A. I suppose it was when the thing first came up.

Q. When was that?

A. I do not know.

Q. When was the libel filed—was it last autumn?

A. It must have been as long ago as that.

Q. And last autumn Mr. Harriman told you that his office had got a suit against the Sun?

A. Words to that effect.

Q. And thereupon you told him that you could give some evidence?

A. I don't know what I told him; I probably expressed some interest in the matter, because I had been interested in it at the start, and I remember reading about the wreck and all that sort of thing.

Q. And then you told him of the conversation with Mr. Lord?

A. Oh, no.

Q. When did you first tell him about that?

A. I don't know that I ever told him about that conversation.

Q. When did you first tell him that you could be a witness?

A. I never told him that.

Q. They must have known something about your knowledge to subpœna you?

A. I have no doubt that they did.

230 Q. When did you first give any evidence?

A. I couldn't tell you, because any information that they got from me was purely conversational and came up as I would talk about any news of the day over the lunch table without any idea of the case.

Q. You had no idea at the time that you would be required to estify?

A. Not the slightest. I hadn't any idea of being subpœnaed even today.

Q. When were you first subpœnaed?

A. This afternoon.

Q. Was the first information given you that you would be made a witness this afternoon?

A. Yes, sir.

Q. Is Mr. Harriman still in the same office?

A. Yes, sir; he gave me the subpœna; we had no conversation about the testimony.

Q. Not since the case came up?

A. Oh, yes; I have asked him since the case was first coming out.

Q. Has he ever talked with you about giving testimony?

A. I told him I wouldn't at one time, and that was the first we ever talked about it. I told him I didn't want to have anything to do with it.

Q. Is he here?

A. No.

Proctors for libellants serve notice to produce on proctors for respondents, four letters written by Chubb & Sons or by members of that firm to the respondent, or to an officer or director thereof, dated respectively April 7, June 3, July 12, and July 29, 1898.

AARON H. BRADLEY, a witness called for the libellants, being duly sworn and examined, testified:

By Mr. HUGHES:

Q. You reside in New York city?

A. Yes, sir.

Q. What is your occupation?

A. I am the advertising manager of the New York Sun.

Q. Are you a notary public?

A. I am, sir.

231 Q. Were you such in 1898?

A. Yes, sir.

Q. Do you know Mr. Chester S. Lord, the managing editor of the New York Sun?

A. I do.

Q. You knew him in 1898?

A. I did, sir.

Q. And you were employed by the Sun in 1898?

A. Yes, sir.

Q. Through that year?

A. Yes.

Q. I show you a paper which has been marked for identification "5" in this proceeding, and I call your attention to the certificate of acknowledgment on that paper and I ask you whether the signature to the certificate of acknowledgment is your signature.

A. It is, sir.

Q. And the seal is your seal?
A. Yes, sir.
Q. And you took that acknowledgment?
A. Yes, sir.
Q. And Mr. Chester S. Lord appeared before you personally and acknowledged what is there stated in that certificate?
A. He did, sir.
Q. Was this subscription to the instrument "Chester S. Lord, for the Sun Printing and Publishing Association," on that instrument at the time you took the acknowledgment?
A. I couldn't say, sir.
Q. You have no recollection?
A. I have no recollection about that.
Q. Haven't you a recollection that there was a signature there when you took the acknowledgment?
A. No, sir. Mr. Lord signed it at that time to the best of my recollection and belief.

Cross-examined by Mr. BARTLETT:

Q. But you don't know whether the words "for the Sun Printing and Publishing Association" were there at the time?
A. I do not.

By Mr. HUGHES:

Q. You will not say they were not?

Mr. BARTLETT: Don't answer that.
Mr. HUGHES: Do you object to it?
Mr. BARTLETT: I object as incompetent, improper, irrelevant and immaterial, and on the special ground that the counsel should not be permitted to cross-examine his own witness.
232 Counsel went before the judge.
Objection overruled.
Mr. Bartlett excepts.
A. No, I will not say they were not.

PERCY CHUBB, a witness called for the libellant, being duly examined and sworn, testifies:

By Mr. HUGHES:

Q. You are a member of the firm of Chubb & Sons?
A. Yes, sir.
Q. Insurance brokers in the city of New York?
A. Marine underwriters.
Q. Your brother is Sidney Chubb who was examined in this case this morning?
A. Yes.
Q. Did you have any negotiations leading to the insurance which was effected upon the yacht *Kanapaha* for the period April 1st or 2nd to June 1st or 2nd, 1898, and the subsequent months?
A. Yes.

Q. State, please, what took place with regard to such negotiations?
A. Some one from the Sun office called on me.

Mr. Bartlett objects as too broad and general.
Mr. HUGHES (to the stenographer): Take his answer.
Mr. BARTLETT: No, he must state who it was——
Mr. HUGHES: You can move to strike it out.
Mr. BARTLETT: No.

Q. Some one called upon you, you say?
A. Yes.
Q. Was this at the outset of the negotiations to which you refer?
A. Yes, sir.
Q. Will you please state as definitely as you can who the person was and what was said and done with regard to the insurance upon the yacht *Kanapaha?*

233 Objected to unless he identifies the person by name.
The WITNESS: I cannot do that.

Q. You did have a conversation with some one relative to the insurance?
A. I did.
Q. Have you got those bills here?

Mr. BARTLETT: The bills are in.
Mr. HUGHES: We only want to look at them. They are in the other room.

Q. Did the person who called upon you state from whom he came?

Objected to unless the person is first identified.
Mr. HUGHES: I am not asking what he said; I am merely asking whether he stated from whom he came or not.
Mr. BARTLETT: That admits the answer yes or no.

A. Yes.
Q. Did you in consequence of the interview you had with such person effect insurance upon the yacht *Kanapaha* for the period April to June, 1898?
A. On account of that and subsequent interviews or orders.
Q. Did you obtain policies of insurance?
A. We did.
Q. The policies of insurance which were produced by your brother this morning?
A. Yes.
Q. To whom did you send those policies?
A. I don't remember.

Mr. BARTLETT (addressing Mr. Hughes): You don't assume they were sent to us, do you, not one of them is in our possession?
Mr. HUGHES: You paid for them.

Q. Mr. Chubb, I show you a letter dated April 7, 1898, or a copy of a letter; can you state whether the signature to that letter is your signature or that of your brother?

A. It is mine.

234 Q. This is your letter-press copy book of Chubb & Sons in which this letter is found on that date?

A. It is.

Q. I refer to Libellant's Exhibit 5 for identification. Can you state whether the original of that letter was sent to the Sun Printing and Publishing Company?

A. I believe it was.

Mr. Bartlett objects to what the witness believes.

Q. Did you have any subsequent interview or correspondence relative to the insurance on the yacht *Kanapaha* after that letter?

A. We had some negotiations afterwards.

Q. With whom did you have such negotiations?

A. I cannot remember.

Q. You mean you cannot remember the names of the individuals?

A. I cannot remember the names of the individuals, only the fact that some such interview took place.

Q. Relative to the insurance?

A. Relative to the insurance.

Q. I show you a letter dated June 3, 1898, in your letter-press copy book. Is the signature to that letter your signature?

A. It is.

Q. Was that letter sent to the Sun Printing and Publishing Company by Chubb & Son?

A. I believe so.

Q. Subsequently did you send these bills that are marked Libellant's Exhibits 8, 9 and 10 to the Sun Printing and Publishing Association and receive the amount therefor?

A. They were sent from our office.

Q. That is these bills were sent out from the office?

A. The office of Chubb & Son.

Q. And were subsequently paid?

A. They so show.

Cross-examined by Mr. BARTLETT:

Q. Don't you know as a matter of fact that all of those twenty policies of marine insurance which were produced by your brother this morning have remained all the time in the office of Chubb & Son?

A. I believe so.

235 Q. And there is no basis for the theory of counsel on the other side that they were sent to the Sun, is there, in point of fact?

A. No.

Q. And they appear all made out in one form to C. T. Bowring & Co., were they not?

Objected to on the ground that the policies show for themselves how they were made out and have all been introduced.

Q. You didn't deposit any of these letters in the mail box? You didn't stamp these letters and deposit them in the mail box with your own hand, did you?

A. No, sir.

By Mr. HUGHES:

Q. You have a mail bureau in your office?

A. We have.

By Mr. BARTLETT:

Q. But you cannot swear of your own knowledge as to whether they were sent or not?

A. No.

ERVIN WARDMAN, a witness called for the libellants, being duly sworn and examined, testified:

By Mr. HUGHES:

Q. What is your occupation?

A. I am a newspaper man.

Q. On what papers are you employed?

A. The New York Press.

Q. In what capacity?

A. Editor and publisher.

Q. Were you employed in that capacity in the year 1898?

A. Yes, sir.

Q. In the spring or summer of 1898 did you have any negotiations relative to having a reporter of the Press on the yacht *Kanapaha?*

A. In the spring, yes.

Q. About what time?

A. Early in April, I think. It was in April; I won't be sure whether it was early, of 1898.

236 Q. Whom did you see with reference to the matter?

A. I saw Mr. Chamberlin of the Sun.

Q. Mr. W. J. Chamberlin, who is present here?

A. Mr. Wilbur Chamberlin, yes, sir.

Q. Did you see anybody else?

A. No.

Q. Did you make your arrangements with Mr. Chamberlin?

A. Practically, as far as I went with him, yes.

Q. Was there a representative of the Press put on board the *Kanapaha* in pursuance of that arrangement?

A. There was.

Q. And payments were made to the Sun for it?

A. Yes.

No cross-examination.

DEWITT C. PACKARD, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. You are a mariner, are you not?
A. Yes, sir.
Q. How long have you been such?
A. For twenty odd years.
Q. By whom are you employed at the present time?
A. By Flint & Company.
Q. Of this city?
A. Yes, sir.
Q. You have been employed by them for some time?
A. Five years.
Q. Do you know the yacht *Kanapaha?*
A. I do.
Q. You were captain of the yacht *Kanapaha* for a time, were you not?
A. I was.
Q. For how long?
A. Two months.
Q. Beginning with what time?
A. About the first of April, 1898.
Q. Do you remember when you first went on the yacht *Kanapaha?*
A. I do.
Q. Will you give me the date as nearly as possible?
237 A. It was during the first week of April; I don't remember the date.
Q. Where was she lying when you went aboard of her?
A. At Tebo's yacht basin, at the foot of 23rd street, Brooklyn.
Q. Have you ever met Mr. Chester S. Lord, of the New York Sun?
A. I met him once.
Q. When was that?
A. It was during the first week in April.
Q. In connection with the *Kanapaha?*
A. No, sir, practically so, yes, sir; I was called to Mr. Flint's office and there I was introduced to Mr. Lord, and they began to talk of chartering a boat.
Q. And about having you as captain?
A. There was nothing said about that; I think they were told that I would be a suitable man.
Mr. BARTLETT: Don't tell what you think.
A. (continued). I was called over there.
Q. I suppose you being called over there had some reference to your getting and going on the boat?
A. Yes, sir.
Q. And you talked with Mr. Lord about that, didn't you?
A. I think I was more of a listener than anything else.
Q. Subsequently you went on board the boat, didn't you?
A. I did, yes sir.

Q. Did you go to the Sun office?

A. Yes, sir.

Q. When did you go to the office of the New York Sun?

A. That was, I should think, about the latter part of the first week in April; about the 5th or 6th, I can't tell the date.

Q. You sailed away from New York with the *Kanapaha*, didn't you?

A. I did.

Q. And this visit to the New York Sun was prior to that time?

A. Prior to that time.

Q. How long prior?

A. I guess it was all done in two or three days. I saw Mr. Chamberlin and Mr. Anderson at the office of the New York Sun.

238 Q. Did you arrange with them about going on the yacht?

A. There was nothing said about it.

Q. When you saw them was it understood that you were going on the yacht?

A. It was understood; I took it for granted. I didn't think about it at all.

Mr. Bartlett moves to strike out that it was "understood."

A. I only suppose that; there was nothing said about it.

Q. Who suggested that you should go to the Sun office?

A. I called up the Sun office by telephone; I was told to come there.

Q. Do you mean you were telephoned to—did you call up the Sun office on the telephone?

A. I was in New Brunswick, on a yacht, and there was a man there that expected me and told me to report at the Sun office.

Q. Do you know who the man was?

A. No, I don't know his name; he was—the message came over a telephone, there, and there was a man in New Brunswick——

Q. New Brunswick, New Jersey?

A. Yes, New Brunswick, New Jersey, and I came over to New York in response to that, and called at the Sun office.

Q. Please state what took place at the Sun office, all you can recall?

A. There is very little, if anything. They made a date with me to meet Mr. Thomas Manning and we went out to try to find out the owner of the yacht *Vamoose*. The *Kanapaha* had not been mentioned at that time.

Q. Who are "we"?

A. Mr. Chamberlin and Mr. Anderson and myself were talking about it. But I left them and went in search of Mr. Manning, and we went and tried to find the owner of the *Vamoose*, and we did find him eventually.

Q. Mr. Manning is a yachtman?

A. Yes, sir, and we did find the owner eventually, after an almost all-night hunt, and the yacht had been verbally chartered over the telephone, and we went back——

239 Q. Over what telephone?
A. Over the telephone.
Q. From the Sun office?
A. I don't know.
Q. Who told you that?
Objected to as immaterial and irrelevant.

Q. You went on board the *Kanapaha* after you left Mr. Chamberlain and Mr. Anderson?
A. Yes, sir; Mr. Lord asked me in Mr. Flint's office—I told him that the *Vamoose* wasn't suitable for the business, and I told them about the *Kanapaha* and two or three others; I thought over the matter——
Q. Suitable for what business?
A. Running dispatches during the war. I mentioned the yacht *Kanapaha*, among others, as suitable for the business.
Q. You got a letter to deliver to the person in charge of the yacht *Kanapaha;* I show you this paper, marked Ex. 1?
A. I know there was a letter, but I don't know whether it was given to me or sent over.
Q. You recall taking that letter down with you to the boat?
A. I did not take it there.
Q. Do you remember that a man by the name of Petersen——
A. I don't know him.
Q. You know there is such a man?
A. There is a good many of them in Brooklyn.
Q. Olaf Petersen?
A. Yes, I know him. I was busy attending to outside matters, and when I got down there the letter had been delivered and the *Kanapaha* had been towed from Manning's basin into Tebo's basin; all done without me.
Q. Did you have any talk with Mr. Chamberlain when you went to Tebo's basin; did you see him there?
A. He came there two or three times.
Q. Did he tell you who brought that boat over from Manning's basin?
A. He did not; some of my crew and Mr. Olaf Petersen brought her over, and two tugboats.
Q. You employed the crew at that time?
A. Yes, sir.
Q. Did you look after putting the vessel in commission and getting provisions and coal?
A. Yes, sir.
240 Q. Do you know who are White & Company?
A. Yes, sir; they are ship chandlers on South street.
Q. Did you purchase provisions from them?
A. I did.
Q. For the yacht *Kanapaha?*
A. Yes, sir.
Q. Did you send in vouchers for your expenses?
A. Yes.

Q. To whom?

A. I O K'd some in Brooklyn, and some in Key West. After I arrived in Key West I didn't send them into the Sun office myself; I turned them over to John R. Spears, who was the chief representative on the boat, of the Sun.

Q. Those that you did send in direct you sent to the Sun office?

A. I did so—I don't remember whether I sent any there, or O K'd them and sent them to the firms and let them send them in.

Q. Who paid you your compensation?

A. Mr. Spears.

Q. Every time that you were paid?

A. I was only paid once.

Q. Was that at the end?

A. That was at the end.

Q. You left the boat in June?

A. The first of June, yes, sir.

Q. Where did you leave the boat?

A. In Key West.

Q. And you were paid there by Mr. Spears?

A. Yes, sir.

Q. For the entire time?

A. Yes, sir.

Q. That is, beginning with the time you first went?

A. Yes, sir.

Q. Was there any money advanced to you other than the moneys you received for your compensation from time to time?

A. No, sir.

Q. For expenses?

A. I had some money of my own which I used as far as it went, and then Mr. Spears paid my bills.

Q. So that whatever you were entitled to receive for your outlays or wages you got from Mr. Spears, ultimately.

A. Mr. Spears, yes, sir.

241 Cross-examined by Mr. BARTLETT:

Q. Before you left New York did you get certain charts of the Cuban coast?

A. Yes, sir.

Q. All the latest charts you could find?

A. All the latest charts I could find of the West Indies islands; it would be hard to tell which I got.

Q. Where did you get them from; the Hydrographic office?

A. I think I got them from Negus, on Water street.

Q. Did you get them after consultation with Flint & Co.?

A. No, sir; I got them myself; I knew myself.

Q. You got the latest charts of the Cuban waters which, up to that time, had been published by the United States Government, or any department thereof?

A. That is what I asked for, and I looked at them, and I was satisfied with them at the time.

Q. And you took them on the yacht?
A. They sent them to the yacht.
Q. And you saw them on the *Kanapaha?*
A. I used them on the coast of Cuba for the two months that I was down there.
Q. And you left them there?
A. I left them there.
Q. When you left the yacht?
A. Yes, sir.

Redirect examination by Mr. HUGHES:

Q. Do I understand that you got all the publications of the Hydrographic office of the United States relative to Cuban waters?
A. No, sir; I didn't say so. I got all that I thought I needed from Negus.
Q. Did you pay for those yourself?
A. No, sir.
Q. You sent in a voucher for them?
A. I O K'd the voucher. I presume I did, for the bills would have to come to me to be paid, and while I don't remember that individual bill I presume I O K'd them for Negus, or sent them to the Sun office. Things were a little mixed up about that time.
Q. The bill wasn't made out to you?
A. Oh, no, sir.
Q. It was made out to the Sun?
242 A. I don't know; I only know that it was a bill of the charts. I don't remember how it was made out, or any other bill.
Q. And the name of the firm is Negus & Company?
A. It is Negus; whether it is Negus & Sons or Negus & Company I don't remember.
Q. You say that you personally did not take this letter; did you send it down by some one?
A. I don't remember how it got there.
Q. You know it was sent there?
A. It was sent there; it got there.
Q. It was sent by your directions?
A. That I can't say; Mr. Manning may have sent it down, or he may have sent it down and given it to one of my crew, and one of my crew delivered it.
Q. You saw the letter?
A. No, I didn't see the letter; when I got down there she had been towed around to Tebo's.

FRANK BOWNE JONES, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. You reside in New York?
A. I do.
Q. What is your business?

A. Yacht and ship broker.

Q. You have been in the business for some time?

A. I have been in the business professionally for about two years.

Q. You have been connected with it——

A. I have been connected with it all my life.

Q. You have done business in the city of New York?

A. Always.

Q. You have had occasion to enter into transactions for the sale of yachts?

A. Yes, sir.

Q. Steam yachts?

A. Yes, sir.

Q. And for the chartering of steam yachts?

A. Yes, sir.

243 Q. That is your business, in fact?

A. That is my business entirely.

Q. Will you state whether there is any market value for steam yachts?

Objected to as incompetent, improper, irrelevant and immaterial, and on the further ground that the qualification of the witness has not been shown.

Cross-examined by Mr. BARTLETT:

Q. How many yachts have you ever bought?

A. I am at present doing more business than any one in New York except Lemoyne.

Q. How long have you been in business as a yacht broker?

A. I said two years.

Q. How old are you?

A. Thirty-five.

Q. What was your business before that?

A. I was the representative of the Grain Elevator Company in New York, and also with Otis Bros.

Q. What kind of elevators are they? Do they elevate grain?

A. They elevate people.

Q. They put lifts in buildings, is that it?

A. Yes.

Q. Where is the parent office of that company?

A. The company is no longer in existence.

Q. Did it fail?

A. No, it was incorporated with the Otis Bros. Company.

Q. Then you were in this lift business until two years ago?

A. Making my living, yes.

Q. Then did you start out as a yacht broker?

A. Yes, sir; I have been a yachtsman for a great many years; I am secretary of the Yacht Racing Union of North America; it comprises all the yacht clubs in the United States.

Q. A sort of a yacht trust, is it?

A. A yacht alliance.

Q. An association of all the yacht clubs?
A. Yes, sir.
Q. You are no relation of Pembroke Jones?
A. No.
Q. Do you own a yacht now?
A. Not at present; I can't afford to own a steam yacht.
244 Q. Have you ever bought a steam yacht?
A. Yes.
Q. For yourself?
A. Personally, no sir.
Q. Have you ever sold a steam yacht for yourself personally?
A. No, sir.
Q. How many steam yachts have you bought for other people?
A. It is impossible for me to say without looking at my books.
Q. Can't you tell us?
A. No, I could not.
Q. Approximately?
A. I wouldn't want to do so, no.
Q. Have you bought one?
A. Yes.
Q. Have you bought two?
A. I had rather not make any statement as to how many I have bought or sold.
Q. But I would rather you would, because you come here as an expert.
A. I have done more in chartering yachts than in selling.
Q. Give us the name of one steam yacht that you have bought?
A. How do you mean bought? We don't buy, we sell.
Q. I suppose that occasionally a steam yacht is bought or sold, aren't they?
A. Yes; that is, we act for the seller and not for the buyer.
Q. You may act for both, or for one. Have you ever acted as the agent of a person who bought a steam yacht?
A. No, sir.
Q. Then you never have bought either personally or as agent for another, or as broker for another, a steam yacht?
A. No, sir.
Q. Have you ever sold for another person a steam yacht?
A. Yes.
Q. When?
A. That is—I am not allowed to say what boats I have sold or I have not sold. I wouldn't consider myself privileged; it is my private business.
Q. If you come here to testify as an expert you will have to tell, or else you won't be allowed to testify. You can't give us the benefit of your conclusions without telling us on what they are based. What steam yacht have you ever bought?
A. I said that I had never bought one.
245 Q. What steam yacht have you ever sold?
A. That I don't care to answer.
Q. Do you refuse to answer?
A. Yes.

By Mr. HUGHES:

Q. You have sold steam yachts?
A. Yes.

By Mr. BARTLETT:

Q. Give us the name of one steam yacht that you have ever sold for another person?
A. That I decline to answer.
Mr. BARTLETT: Mr. Hughes, you are surely not going to offer him as an expert?
Mr. HUGHES: I do.
Mr. BARTLETT: I object to his answer.
The COURT: I sustain the objection, but all questions on damages are reserved; without prejudice to either party, the evidence is for the present excluded.

Examination of this witness is suspended.

FERDINAND B. KNIGHT, a witness called for the libellant, being duly sworn and examined, testified:

By Mr. HUGHES:

Q. You are a master mariner?
A. Yes.
Q. How long have you been such?
A. On sailing vessels ten years. I have just received my appointment on steamers now.
Q. You have cruised about Cuban waters?
A. Yes, sir; for the last two years on the Ward line, the New York & Cuba Mail Steamship Company.
Q. In what capacity have you been in the Ward line?
A. Third, second and chief officer.
Q. Running to what ports?
246 A. Havana and Mexico, Santiago, Manzanilla, Cienfuegos, Guantanamo and Nassau.
Q. How were you employed during the Spanish war?
A. Chief officer on the steamship *Vigilancia*.
Q. Running where?
A. Employed by the United States Government, carrying troops to Santiago from Tampico.
Q. Have you had occasion to cruise along the north coast of Cuba?
A. Yes, sir.
Q. Frequently?
A. About two weeks ago I returned from there.
Q. For how long a time have you been familiar with the north coast of Cuba?
A. When I was in sailing vessels, most of my voyages were there, possibly 5 or 6 times during the year I would go there in sailing vssels to Nuevitas and different ports.
Q. Have you acted as pilot at all along there?

A. Yes, sir.
Q. In and about the harbors on the north coast of Cuba?
A. Yes, sir.
Q. Do you know Nuevitas harbor?
A. Yes, sir.
Q. Are you able to take vessels in and out of Nuevitas harbor?
A. Yes.
Q. You know the old Bahama channel?
A. Yes.
Q. And the course from Cape Haytien through the old Bahama channel to Havana?
A. Cape Haytien is another island. Yes, sir; I can take a ship from Cape Haytien through the old Bahama channel.
Q. I understand you have been in Nuevitas harbor?
A. Yes.
Q. Do you know Nuevas Grandes and Nuevitas del Principe?
A. Yes, sir.
Q. How far are they apart (showing chart to witness)?

Mr. Bartlett objects to paper being shown witness.

247 A. Nuevas Grandes is at the mouth of the river, and the entrance of the Nuevitas river I should say was about 12 miles, perhaps 15.

Q. That is from Nuevas Grandes to the mouth of the Nuevitas harbor?
A. Yes, sir.
Q. Is there a reef along the Cuban coast between these points?
A. There is a reef lying about 7 to 9 miles from the eastern point, about two miles off the eastern point is the entrance of Nuevitas harbor.
Q. Lying 7 to 9 miles E. N. E.?
A. Running parallel with the shore, very near.
Q. How near to the shore?
A. The outer edge in places is fully a mile and three-quarters or a mile and a half off.
Q. Running how far out?
A. In places it was a mile and a half to a mile and three-quarters about, and it narrows up as you go towards Nuevas Grandes until it gets within half a mile of the shore.
Q. Is there more than one reef off Point Nuevitas, the mouth of the harbor, or 7 miles to the east of there?
A. One continuo-s reef.
Q. There is only one?
A. Only one that I know anything about.
Q. I show you a chart published by the English admiralty, chart of the West Indies——

Objected to.

Q. (continued). And I ask you if the reef you have mentioned is the reef indicated on that chart by the dotted line——

Objected to.

Q. (continued). Running from Point Nuevitas down here to Nuevas Grandes——

Objected to.

Question withdrawn.

248 Q. I show you what purports to be a map or chart and ask you whether you find on that map or chart any line indicating the reef which you have mentioned so that you can identify it?

Objected to as incompetent, improper, irrelevant and immaterial, and on the special ground that the witness should not be shown a chart which has not been offered in evidence.

Answer is taken subject to decision of the court.

A. It starts in there, and it is dangerous down as far as there (indicating).

Q. You are pointing to a dotted line that appears on this map?

A. That is the outside edge of the reef where the little dots are; that is what you put on a chart to show a reef; here is the ocean here.

Q. Then what you point out is this dotted line running from Point Nuevitas del Principe to Nuevas Grandes and is the line of the reef that you have spoken of?

A. The one that I have referred to, yes.

The chart is offered in evidence and is marked 16 for identification of this date.

Q. That reef is well known to navigators, is it not?

Objected to as incompetent, irrelevant, improper and immaterial.

Question withdrawn.

Q. Can you state from your experience of those harbors whether that reef is a well-known reef?

Same objection, and on the specific ground that the witness cannot state as to the information of other persons.

Examination suspended and James Jacob Lewis examined.

249 JAMES JACOB LEWIS, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. What is your employment?

A. Engineer, sir.

Q. Where?

A. Steam yacht *Lagonda*.

Q. Were you ever employed on the steam yacht *Kanapaha?*

A. I was, sir.

Q. Were you on the steamer *Kanapaha* prior to the time that she went to Cuban waters in 1898?

A. I was employed on her at that time, but I was in Philadelphia; my wife was dead and I couldn't go in the yacht.

Q. You were employed on the yacht prior to that time for some time?
A. Yes, sir, up to the first day of April, 1898.
Q. You had been employed for some time before?
A. For seven years.
Q. You were familiar with the yacht?
A. I was, sir.
Q. Can you tell how high the bridge of the yacht *Kanapaha* was above the water line?
A. I can, sir.
Q. Will you please state?
A. 14 feet 2 inches from the water line to the platform on the bridge where a man stood on her.

Cross-examined by Mr. BARTLETT:

Q. How did you come to testify here today?
A. Mr. Murray.
Q. When?
A. Some time ago.
Q. How did he find you?
A. He found me by Mr. Moore; I was in a yacht, and Mr. Moore knowed where I am all the time.
Q. How do you know the height of the bridge?
A. I measured it; we had an argument here about three or four years ago about a man getting washed off the bridge of a yacht to sea, and we measured the distance on the *Kanapaha*, the captain and me and somebody else, to see how high it was; how high the sea would be before it would wash a man off the bridge, and I could say positive that it was 14 feet 2 inches, or 14 feet 4 inches at
250 the outside. It wasn't more than two inches out of the way.
Q. What was the length of the *Kanapaha?*
A. She was 187 feet.
Q. What was her tonnage?
A. Her tonnage was 240 ton gross.
Q. What was her beam?
A. Beam 23½ feet.

By Mr. HUGHES:

Q. Do you know how much water she drew?
A. She drew 10.10 when she was loaded with coal; that is, loaded.

Examination of FERDINAND B. KNIGHT continued:

Counsel went before the judge for the ruling as to objections to former questions.
Objection to last question to Knight overruled. Mr. Bartlett excepts.

A. Yes.
Q. Were you acquainted with the current through the old Bahama channel?
A. Yes.

Q. Will you describe the current?

A. The current runs about S. W. from N. E. ordinarily. On the full and change of the moon it is stronger than it is at other times.

Q. How is the current known?

A. We call it the old Bahama channel current. It runs into the gulf as it goes up by the Salt Cay bank.

Q. Do you know where this current starts?

A. We noticed it was more perceptible off Cape Lucretia.

Q. It started with the equatorial current?

A. Yes, sir, it is a part of that.

Q. Will you state whether or not there is a division off the east end of Cuba?

A. Yes, sir.

Q. How does the current run from there?

A. The south side of Cuba?

Q. It divides, does it not?

A. Yes, sir.

Q. In what manner?

A. Passes either side of the island, goes to the southward on the south side of Cuba and to the southwest on the north side.

251 Q. How is that current on the north side?

A. Ordinarily half a knot or a knot; but I have seen it as high as two knots an hour on the full and change of the moon.

Q. Can you describe the current off Point Nuevitas del Principe?

A. It sets in shore there pretty well, in towards the land a little, or running a little more to the southward, about S. S. W. in towards the bights, but as you draw down near the old Bahama channel it runs straight there.

Q. How swift is the current within 7 or 10 miles of Point Nuevitas del Principe, that is 7 or 10 miles to the east of that point?

A. We make a practice of allowing two knots an hour.

Q. That is a well-known current to navigators?

A. Yes; that is generally well known among people who coast there a great deal.

Mr. Bartlett moves to strke out the answer as incompetent, improper, irrelevant and immaterial, and not possibly within the knowledge of the witness, and as assuming facts not proven.

Q. Can you state how far the light at Mantanillas and the Eastern Point light at the harbor of Nuevitas del Principe can be seen when lit?

A. Eastern Point light is visible—I won't be certain, but—12 miles—Mantanillas cay 17.

Q. Do you know Cape Lucretia?

A. Yes, sir.

Q. About how far is that from Nuevitas del Principe?

A. I cannot tell you accurately, 75 miles.

Q. That is to the eastward?

A. Yes, sir.

Q. On the north coast of Cuba?

A. On the north coast of Cuba.

Q. Will you describe the character of the coast from Cape Lucretia to Nuevitas del Principe?

A. The coast is bold and high in the vicinity of Cape Lucretia as far down as Nuevas Grandes. It tapers down and shows up at Nuevas Grandes.

Q. How is it at Nuevas Grandes?

A. Not very high.

252 Q. Isn't there a high point at Point Manati?

A. There is some high land; it is not extraordinary high. It is high land in the interior.

Q. How far is Point Manati from Nuevitas del Principe about?

A. 40 miles.

Q. How far did you say Nuevitas del Principe was from Nuevas Grandes?

A. I can't tell you exactly, but I should judge 25 miles, more than that, 30 miles.

Q. Haven't you stated that it was something like 12 or 13 miles between those points?

A. From Nuevas Grandes to Nuevitas?

Q. Yes, to the harbor of Nuevitas.

A. The harbor is right in front of the town. Nuevitas del Principe is the harbor.

Q. That is the point I mean, the eastern light there?

A. That is not the harbor, that is the entrance to the bay.

Q. How far is it from the eastern light to Nuevas Grandes?

A. About 10 miles.

Q. What I mean by the eastern light is the Eastern Point light of Nuevitas harbor?

A. Yes, sir.

Q. And it is about 10 miles from there to Nuevas Grandes?

A. No, it is more than that, nearer 20 or 25 miles.

Q. I show you the United States chart of the West Indies and island of Cuba——

Objected to on the ground that the chart shown the witness is not in evidence, the chart being issued by the department subsequent to the wrecking of the vessel.

Mr. HUGHES: I merely want to know whether you can by looking at this chart refresh your recollection as to the distance from the Eastern Point light to Nuevas Grandes so as to be able to state from your memory how far that is?

Objected to on the ground that it is an attempt to cross-examine the libellant's own witness.

Taken subject to objection.

253 A. 17 miles.

Q. Is there not near Nuevas Grandes some high ground?

A. Little hummocks, not extremely high.

Q. Enough to enable one to take reckonings?

A. Yes, we take bearings there.

Q. You take bearings off Nuevas Grandes?

A. Yes, sir.

Q. Now take 4 or 5 miles east of Nuevas Grandes, can you tell me how far you can see the shore at that point in daylight?

A. The coast line, 10 miles.

Q. Suppose that you are standing on a vessel 14 feet above the water line, can you tell me how far you could see the shore, say five miles to the east of Nuevas Grandes?

Objected to as incompetent, improper, irrelevant and immaterial, and on the ground that it is hypothetical, depending on the eyesight of a particular individual, the time of day, the light and the condition of the atmosphere.

Taken subject to objection.

A. Five miles east of Nuevas Grandes?

Q. Along there from Nuevas Grandes, say 5 miles along the coast?

Objected to as incompetent, improper, irrelevant and immaterial.

Taken subject to objection.

A. From 14 feet elevation, twelve miles.

Q. How far with a glass?

Objected to as incompetent, improper, irrelevant and immaterial.

Taken subject to objection.

A. I could not answer that question; some glasses are more powerful than others.

Q. With a powerful glass?

254 Objected to as incompetent, improper, irrelevant and immaterial.

Taken subject to objection.

A. 14 miles.

Q. Can you state whether in those waters and out about that part of the coast there is any particular clearness or otherwise about sunset in the atmosphere?

A. I have noticed at sunrise and sunset——

Mr. BARTLETT: You are asked about this particular place.

The WITNESS: Yes, sir.

Q. What have you noticed regarding that?

A. At sunrise and sunset objects are more definite than they are during the middle of the day.

Q. And you can see certainly as far as you can at any other time during the day?

A. Yes, sir; that is a well-known fact among seafaring men, particularly at sunrise.

Q. And similarly at sunset?

A. Yes, sir.

Q. Will you please explain what you mean by taking bearings, showing what you do, that is bearings from the land such as you say can be taken off Nuevas Grandes?

A. Taking bearings is to locate your position by the compass, a compass bearing of any point that you wish to get the distance of.

Q. Can you get your distance off shore in that way?

A. Yes, sir.

Q. Will you explain how you do it?

Objected to as immaterial, incompetent, irrelevant and improper, and on the ground that this is not an educational institution.

Counsel go before the court.

Objection overruled. Mr. Bartlett excepts.

A. For instance, a ship is steering north to make an object bearing northwest; the ship is going 12 miles an hour, which is
255 a mile in five minutes. Take the time when the object bears northwest and again when it bears west, and the time elapsed calculated with the distance the ship is making, will give you the distance the ship is off from the object when it bears west or when it is abeam.

Q. Am I to understand that the taking of such bearings as you have said could be taken off Nuevas Grandes, would enable you to verify your supposed position off shore?

A. Yes, sir.

Q. Am I to understand that the taking of these bearings can be done at Point Manati or Point Nuevas Grandes?

A. Point Nuevas Grandes; yes, it can be done there.

Q. Or any other known point indicated on the chart which the mariner has?

A. Wherever there is a headland or promontory or any other point that we can distinguish on the coast.

Q. Suppose you were going through the old Bahama channel and at sunset were in sight of the coast and were about 18 or 20 miles east from the Eastern Point light and within sight of land at about Nuevas Grandes, what would it be proper to do to ascertain your true position?

Objected to as immaterial, incompetent, irrelevant and improper.

Counsel go before the court.

Objection overruled. Mr. Bartlett excepts.

A. I don't understand that question. Cross-bearings——

Q. (Question repeated to witness.)

A. Cross-bearings and chart, two prominent headlands——

Q. I will ask you whether in steaming along the north coast of Cuba on a northwesterly course to make the old Bahama channel and at a rate of from 11 to 12 knots an hour, so that at about half past seven the steamer is found about 7 miles east of the Eastern Point light, it would be possible in clear weather if you were
256 in sight of shore most of the day, to ascertain up to and including sunset the true position of the steamer?

Same objection, ruling and exception.

A. Yes, sir.

Q. I would like to ask you whether in steaming along the north

coast of Cuba at a rate of about 11 to 12 knots an hour, a northwesterly course to make the old Bahama channel, so that at about half past seven o'clock in the afternoon you are found about 7 miles east from the Eastern Point light of Nuevitas, it would be possible by taking observations and bearings in the course of the day to ascertain whether a current was or was not setting you in towards the shore?

Same objection, ruling and exception.

A. It would be possible to ascertain during the day that you had been set inshore.

Q. Suppose you were taking a northwesterly course and along the north coast of Cuba, bound for the old Bahama channel and expecting to see Manzanilla light off Nuevitas harbor about the time it became dark, and you were at sunset about 18 miles east of Nuevitas harbor. Failing to see the light at dark, what would you do?

Objected to as immaterial, incompetent, irrelevant and improper, and on the specific ground that it assumes facts not proven and on the further specific ground that it is hypothetical and calls for a conclusion of the witness.

Same ruling and exception.

A. Stop and steer off shore.

Q. Will you explain why?

Same objection, ruling and exception.

A. It isn't safe to run for an object when you expect to see it and don't see it; it isn't safe to run your distance up.

Q. If an object bears 15 miles from you it isn't safe to run
257 15 miles towards it if you don't see it. If it is visible 15 miles and you didn't see it, it isn't safe to continue on 15 miles without seeing it.

Q. And the proper course would be to stand off shore?

Same objection.

Question withdrawn.

(Hearing resumed before the court.)

By Mr. HUGHES:

Q. Are there not sailing directions issued by the Hydrographic office, which are in use among seamen, navigators?

A. Yes, sir.

Q. Giving full directions as to sailing points, reefs, and so on?

A. Yes, sir.

Q. And it is customary to have these sailing directions that are issued by the Hydrographic office of the United States?

A. Yes, sir.

Q. That is customary for navigators to have them?

A. Yes, sir.

Q. In sailing about Cuban waters?

A. Yes, sir.

By the COURT:

Q. What ones would you specify for Cuban waters?

A. The Hydrographic office issues a very good copy for Caribbean sea and West India islands; the title is, "Caribbean Sea and West India Islands."

Q. The same for that region as the Coast Pilot for this coast?

A. Yes, sir.

Q. Some sort of collection of directions?

A. Yes, sir; giving directions of entrance and approaches to the different harbors, character of the headlands and color of the different light-houses and beacons on the coast; and Bahama banks, giving them specific directions in regard to sailing around them; the character of the keys, and so forth, and color of the water.

Q. Is it customary for vessels to have those sailing directions?

A. It is customary for the captains to have them.

258 Q. As part of the equipment of the ship?

A. Of his equipment; yes, sir.

Q. For whatever voyage he goes upon?

A. Yes, sir.

By Mr. HUGHES:

Q. You say the publication you have mentioned is of the Caribbean sea and gulf of Mexico. Is this that I show you, No. 86 of the United States Hydrographic office?

A. Yes, sir; that is one of them. It comes in two volumes.

Q. And this is volume 1, which has in it the sailing directions for the north coast of Cuba?

A. Yes, sir.

Q. In chapter 6. I call your attention——

The book is marked Libellant's Exhibit 17 for identification.

Q. I call your attention to pp. 126 and 127 of this book (No. 17 for identification) under the title "Port Nuevitas del Principe." Is that Port Nuevitas del Principe the port at which the Maternillos and Eastern Point lights are which have been mentioned in the testimony?

A. The Eastern Point light-house marks the approach of one side and Maternillos light the other side.

Q. Maternillos you can see 17 miles?

A. Visible 17 miles.

Q. And the Eastern Point, how much?

A. About 12 as near as I can remember.

The COURT: Which is the one that was out that night?

Mr. HUGHES: They claim both were out. He has testified they ought to have stood off shore when they didn't see that.

The COURT: Had they located their position positively at that time?

Mr. HUGHES: Yes; by their captain. The captain had been sailing all along the coast all day and could have ascertained by several points his exact location. For example, at sunset he could have

told exactly where he was. The captain says he took no
259 observations to ascertain where he was and no bearings, that is Capt. Atkinson.

Q. I call your attention to the statement in these Sailings Directions, pp. 126 and 127, under title, "Port Nuevitas del Principe from Nuevas Grandes the coast takes a northwest direction for 13 miles"——

Mr. BARTLETT: I object to that unless the book is put in evidence.

The COURT: I must receive this.

Q. (Reading)—"to Nuevitas del Principe is skirted by a reef all the way and should not be approached within two and a half miles." I will ask you whether the reef mentioned there is this reef to which you have testified which skirts the coast running easterly from Port Nuevitas del Principe?

A. Yes, sir.

Q. The reef which you have testified to was well known?

A. Yes, sir.

Cross-examined by counsel for respondent.

By Mr. BARTLETT:

Q. With whom have you talked about this case?

A. I wasn't aware of anything of the kind until ten o'clock this morning.

Q. Who came to see you about it?

A. A gentleman from that gentleman's office.

Q. From Mr. Murray's office?

A. Yes, sir.

Q. How did they come to send to you, do you know?

A. As I understand it they sent to the New York & Cuban Mail Steamship Company for some captain to describe this coast, and I was sent up by the general manager of our company.

Q. Of the Ward line?

A. Of the Ward line.

Q. And you have just received a certificate as master of a steam vessel?

A. No, sir, I hold a certificate as master of a steam vessel for over two years.

Q. What have you just received?

A. Been appointed to a ship here in the Ward line today.

Q. What ship is that?

A. *City of Washington.*

260 Q. How often were you in Nuevitas harbor in the year 1898?

A. In the year 1898? In 1898 I wasn't in Nuevitas harbor at all.

Q. How often did you sail by Nuevitas harbor in the year 1898?

A. Four times going and coming.

Q. When, on what occasion? What months?

A. I don't exactly remember the date. It was the month that we took the soldiers from Tampa over to Santiago, we passed there going over; returned for another lot, carried them the same way and went back again; four times.

Q. Did you have occasion on those occasions to go through this channel?

A. Yes, each time.

Q. Have you ever been in Nuevitas harbor?

A. Yes, sir.

Q. How many years ago?

A. Last time was in '97—'96.

Q. When was the last time in the year 1898 that you passed Nuevitas harbor? Was it in May or June?

A. Just after the battle of Cervera.

Q. About the 6th of July?

A. Either the 6th or 8th, I can't remember.

Q. Were the lights of those light-houses burning then?

A. They were not.

Q. Or at any time when you went by the harbor in that year?

A. The last trip we made from Tampa to Santiago the lights were lit.

Q. When was that?

A. That was in August.

Q. Do you swear to that?

A. No, that was later. That was in October.

Q. And the previous trip was when?

A. The previous one to that one.

Q. Was it the July trip? Previous to your October trip was it the July trip?

A. September.

Q. What part of September?

A. Somewhere about the latter part.

Q. Were the lights lit then?

A. I didn't see them, no sir. We passed there in the daytime.

Q. In July and in May they were not lit, were they?

A. In May, no.

261 Q. Nor in July?

A. Nor in July.

Q. And you passed once in May and once in July?

A. Passed once in June, the first of June, and once—passed twice in June, that is, going and coming.

Q. Going and coming and return?

A. Going over and returning.

Q. And the lights were not lit then?

A. The lights were not lit then, at least we didn't see them.

Q. And in July, was that the next trip?

A. Yes.

Q. The lights were not lit then?

A. We passed there in the daytime.

Q. And the next occasion was October?

A. October.

By the COURT:

Q. Then they were lit?

A. Yes, the lights were lit then, we got there just before dawn. I saw Maternillos light, but not Eastern Point light, because it was turned out; it was daylight when we passed there; we didn't go up to Maternillos light until sunrise, they put the lights out at sunrise.

By Mr. BARTLETT:

Q. Did you have any conversation today about your testimony?

A. Conversation in regard to my testimony today? No, sir, any more than I was requested to come up here and tell what I have told.

Q You were not told as to the character of the questions?

—. No, sir.

Q. No conversation with anybody about that?

A. No, sir; no more than what I have just said. I was asked to state my knowledge in regard to that coast, what I knew of the coast, that is all.

Q. Do you know Capt. Atkinson?

A. I do not; no, sir.

Q. When did you first see—when you were subpœnaed this morning did you come to the court-room here or go to Mr. Murray's office?

A. I went to Mr. Murray's office with a gentleman and was told that I was wanted here.

262 Q. Whom did you see at Mr. Murray's office?

A. I saw this gentleman.

Q. And then you talked about the case?

A. He asked what my knowledge was about the coast of Cuba and I told him my experience there from a young man.

Q. Did you look at any charts then?

A. No, sir.

Q. In the office?

A. Oh, yes, I did, too. I saw a chart of the coast of Cuba and I was asked if that was one I used.

Q. Where was that?

A. At Mr. Murray's office.

Q. And that was this morning?

A. That was this morning.

Q. Was that one of the charts as to which you have been examined this afternoon?

A. I couldn't say. It was one of the same issue.

Q. One of the same series?

A. Yes, sir.

Q. It was either that or a copy, wasn't it?

A. It was a chart, the same kind of chart.

Q. Did you indicate to Mr. Murray then the outline of this reef running along it?

A. No, sir.

Q. What did you indicate, different points on the chart?

A. I don't know that I indicated anything. I was asked if I knew what that chart was and if I was in the habit of using that chart, and I told him that I was, always used that United States chart in preference to any other, as I considered it the most accurate. They are issued yearly and corrected right up to every two or three months and we use them in preference to any other because we work in connection with the Hydrographic office ourselves.

Q. Then the United States chart corrected up to the latest date is the best chart for a navigator in Cuban waters to have, is it?

A. I think so.

Q. And you consider it better than the British admiralty chart?

A. I don't know because I am not in the habit of using the British admiralty coast charts. For general charts, yes, sir; the North Atlantic and South Atlantic, I have used them.

Q. Have you ever used the British admiralty chart of Cuban waters?

A. Never.

263 Q. Never have seen them?

A. Yes, sir.

Q. But never used them?

A. Never used them.

Q. And have never taken them on your cruises in Cuban waters?

A. I have had them aboard ships I have been on, as property of the ship.

Q. That happened to be there, but you have taken for your own guidance the charts issued by the United States Government, corrected up to the latest date?

A. Yes, sir.

Q. A chart such as this which has been marked for identification?

Mr. HUGHES: It has not been marked for identification.

Q. Such as this chart corrected up to November 1st, 1898, is?

A. Hydrographic chart; yes, sir.

Q. A chart such as that you consider the best for the navigator's guidance in Cuban waters?

A. Yes, sir; there are charts on a larger scale than that that are far better than that.

Q. Did they tell you where the *Kanapaha* was wrecked?

A. I don't remember that they did; I can't say. I knew that she was wrecked, I knew at the time she was wrecked; I was down there myself, but I don't know that any one has told me where she was wrecked.

Q. Don't you know where she was wrecked?

A. I know she was wrecked on the reef.

Q. On the reef as to which you have testified?

A. Yes, I knew that before I came here.

Redirect by counsel for libellant.

By Mr. HUGHES:

Q. These United States charts you have spoken of are used in connection with the sailing directions which you have mentioned?
A. Yes, sir.
Q. That is this Exhibit 17 for identification?
A. Yes, sir.
Q. Can you tell me how these charts are corrected from time to time up to date?
264 A. By observations taken by such men as I am who pass these places and notice anything unusual or notice the distance has been made out wrong. And the United States have regular men-of-war that go there and recalculate distances.
Q. You saw the *Kanapaha* when she was down there cruising about, didn't you?
A. Yes, sir.
Q. During the summer of 1898?
A. Yes, I saw her down there.
Q. Did you ever see her flag?
A. I saw her flag flying "New York Sun," which I suppose was her flag.
Q. On the boat?
A. On the mast; yes, sir.

WILBUR J. CHAMBERLIN, recalled for respondent, testifies:

By Mr. BARTLETT:

Q. Was the chart that was on board the *Kanapaha* at the time of the wreck and which was lost with it, one of the series issued at the Hydrographic office in the Navy Department in Washington, D. C.?
A. It was.

By the COURT:

Q. Do you know the date of the chart?
A. I do not.

The COURT: Of course it must have been the one immediately preceding. You can find a copy of that if you inquire where they supply these charts they undoubtedly have got one there, and if you care to look you will very likely find there is no change whatever as to this particular thing.

By Mr. HUGHES:

Q. The chart that you got about the 1st of April, 1898, was the last chart which had been issued in the Hydrographic office prior to that date?
A. As I understand it.

Mr. HUGHES: Will you admit that the words "for the Sun
265 Printing and Publishing Association" in ink after the signature "Chester S. Lord" in the papers marked for identification Nos. 3, 4, 5 and 12, were written by Chester S. Lord?

Mr. BARTLETT: We will admit for the purpose of this action that they were written by him.

The COURT: For the purpose of this action they may be treated as having been written by him.

Mr. BARTLETT: Yes.

Mr. HUGHES: At the time he wrote his signature, of course.

Mr. BARTLETT: I don't know when he wrote it, but that does not make any difference.

The COURT: That will be presumed if there is nothing to the contrary.

Adjourned to 1.30 p. m. Thursday, April 20, 1899, at which time the case is to be argued orally.

NEW YORK, *April* 24, 1899.

Met pursuant to adjournment.

CARL W. JUNGEN, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. What is your occupation?

A. I am lieutenant in the U. S. Navy, in charge of the branch Hydrographic office in this city.

Q. You are familiar with the charts of the Cuban waters issued by the United States Hydrographic office, are you not?

A. I am.

Q. I show you a chart and will ask you if this is a chart of the Cuban waters showing the north coast of Cuba as the same was according to the issue prior to April 1, 1898; that is, showing no corrections later than April 1, 1898?

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A. The latest correction shown on this chart here is October, 1897.

Q. This is a United States chart, is it not?

A. Yes, it is.

Q. Issued by the Hydrographic office?

A. Yes, sir.

Q. What number?

A. Number 947.

Mr. HUGHES: We offer the chart in evidence.

Preliminary cross by counsel for respondent.

By Mr. BARTLETT:

Q. Has that chart been in your custody?

A. That particular chart? I had it this morning to compare with a standard chart in our office. Do you mean to say was it issued from our office? No, sir; that was issued from the Hydrographic office in Washington and probably was—unless it was used by some Government vessel—purchased by the owner of it from a Government agent.

Q. What I wish to ascertain is, did this chart come from your office or did the attorneys produce it and show it to you?

A. The attorneys produced it and showed it to me.

Q. Do you know where they got it, of your own knowledge?

A. Only from hearsay, not from my own knowledge.

Q. This chart was not in your office, this is not a record from your office?

A. No, sir; it is not.

Q. Have you some like this that are records?

A. I have one exactly like it that I compared that one with.

Q. Couldn't you have brought that here?

A. I could have brought it here, but I have not any authority to remove any of the records from the office.

Q. Is this an exact copy of yours?

A. This is an exact copy of ours up to the date, and the last correction made on here—that is, a correction that was made on the plate—the Roman letters here indicate the month and the year is after in Arabic letters.

Q. But you have not been through every inch of this chart yourself?

A. I have compared it very closely.

Q. Have you compared it?

A. I have compared it myself.

267 Q. Have you compared it with reference to the harbor of Nuevitas, with reference to the approaches to the harbor of Nuevitas?

A. Yes, sir.

By the COURT:

Q. Do you know where charts are printed that are supplied to the public for sale?

A. Yes, sir; they are printed by the bureau equipment under the supervision of the Hydrographic office in Washington. They are engraved and they are sold in these ports by the agents of the Government.

Q. Are you not familiar with this issue of charts like this?

A. Am I familiar with the issue of them?

Q. With the printing and issue of such charts as that?

A. I know the charts are published there and are delivered to agents; that is all I know about it. I have never had anything to do with the making of one of those charts.

Q. You are not in the habit of seeing them?

A. Certainly I am. I am particularly familiar with that chart.

Q. Are you familiar with this class of charts?

A. Yes, sir.

Q. Don't you know from the appearance of this chart whether it was one that was issued by the Government?

A. I certainly do.

Q. When was it issued?

A. We received it in our office in October, 1897.

The chart is admitted in evidence. It is marked Libellant's Exhibit 19, April 24, 1899.

By Mr. HUGHES:

Q. I see in the corner of this chart that has just been marked in evidence a statement referring to notice to mariners. Are notices to mariners published from time to time by the Hydrographic office in Washington?

A. They are.

Q. Are you familiar with such notices?

A. I am.

Q. I show you a paper headed "Notice to mariners, Washington, October 22, 1898; No. 43." I will ask you if that is the offi-
268 cial notice of that date from the Hydrographic office?

Mr. BARTLETT: I object to this as incompetent, irrelevant, immaterial and as not the best evidence.

The COURT: He may testify whatever he knows about the issue of such a notice as this to mariners.

Mr. BARTLETT: I except.

A. This is a document that is issued by the Hydrographic office in Washington of which we have received a large number, and distributed them as official.

By the COURT:

Q. Do you know when you received it?

A. I cannot tell the exact date when it was received, but it was shortly after its publication.

Q. Do you know when that was?

Mr. BARTLETT: October 22, 1898, was after the wreck of the vessel. I except to the testimony as incompetent, improper, and on the ground that it appears that the paper was issued subsequently to the stranding of the vessel.

Mr. HUGHES: This is the official notice from the Government office, produced from the custody of the witness, he having received it in the course of his public employment in the Government office, and is the official statement as to where the wreck of the *Kanapaha* lies.

The COURT: I cannot allow that. The position is not controverted, is it?

Mr. HUGHES: This is slightly different from what Capt. Atkinson testifies. This fixes it definitely so that there can be no dispute about it. This official record is a high grade of evidence on that subject.

The COURT: I must exclude that.

269 By Mr. HUGHES:

Q. I understand that this paper that I show you was received by you from Washington and was produced from your custody?

A. Yes, sir.

Mr. HUGHES: We offer the paper in evidence.

Mr. BARTLETT: I object to it as incompetent, improper, irrelevant, immaterial, and as not the best evidence of any facts therein stated, and as having been issued subsequent to the wrecking of the vessel.

The COURT: I understood that to be offered as proof of the fact as to the position of the wreck of the *Kanapaha*, which is recited in it. I exclude it as secondary evidence.

Mr. HUGHES: We except.

The paper is marked Libellant's Exhibit 20 for identification, April 24, 1899.

Q. Are you familiar with the sailing directions issued from time to time by the U. S. Hydrographic office for the use of mariners, the official publication?

A. You ask me if I am familiar with them? I am familiar with the use of them.

Q. You are familiar with the fact that there are such sailing directions published officially?

A. Yes, sir.

Q. And you have them?

A. We have a complete file of them at our office.

Q. I ask you whether this book I now show you is the official publication of the United States Hydrographic office with reference to the Caribbean sea and the gulf of Mexico and adjacent waters issued in 1892?

A. It is.

Mr. HUGHES: I offer in evidence pps. 122 and 123 of the book.

Mr. BARTLETT: I object to it as incompetent, improper, irrelevant, immaterial, and as not the best evidence of the facts therein stated.

Mr. HUGHES: The language is precisely the same as in Exhibit 17 which was of 1898.

270 Objection overruled. Respondent excepts.

Mr. HUGHES: I read in evidence from page 5 of the edition of 1892, under the head of "Squalls—currents" the following:

"On the north coast of Cuba as far west as Matanzas the current almost always sets to the westward with a force varying from ½ knot to 3 and even at times 4 knots. This westerly current is felt, but with less constancy, on the eastern side of the Bahama banks and islands, and is due partly to the constant trade wind acting on the surface of the sea and is partly a continuation of the great equitorial current which is deflected to the N.W., by the coast of South America and moves swiftly and steadily through the passage between the islands of Trinidad and Granada. Though not invariable, the experienced navigator should vigilantly guard against the effects of this probable current by never losing an opportunity by night or day of verifying his position."

Mr. BARTLETT: We object to this as incompetent, improper, irrelevant, immaterial, and as not the best evidence of the facts therein stated.

Objection overruled. Respondent excepts.

The book is marked Libellant's Exhibit 21 for identification, April 24, 1899.

Cross-examined by counsel for respondent.

By Mr. BARTLETT:

Q. When did you get the book of 1898 in your office dated April 29th?

A. I was not in the office at that time. I have not been in charge of the office except since December, 1898. That copy is probably in the office. I have not looked for it. I looked at one this morning.

Q. You don't know anything about it?

A. I know that is an official copy.

The COURT: On that testimony I should not pay any attention to the one of 1898.

271 Q. Did you give this book to Mr. Murray?

A. I did not.

Q. The one of 1892 I refer to?

A. I did not.

Q. Have you ever seen it before?

A. Yes, I saw it last Saturday.

Q. Where?

A. In his office.

Q. Did Mr. Murray send for you?

A. I went there myself. I had a subpœna and I wanted to know why I was summoned.

Q. When did he subpœna you?

A. Last Saturday, to come here today at half past one. I knew nothing of the case.

Q. You had no previous conversation?

A. No, sir.

Q. Did he produce this book then?

A. I saw that book in his office then and I looked it over. I presume it is the same book—sailing directions for the coast of Cuba and the Caribbean sea and the gulf of Mexico.

Q. I show to you the first page of this book and ask you under the word "issued" what date appears?

A. May 4, 1898.

Q. This book did not come from your office?

A. Not to my knowledge. I don't think it did; we don't give away any of those books.

Q. Part of this is printed upside down?

A. If you will let me look at it I will tell you whether part is printed upside down or not.

Q. I mean bound upside down.

A. It is probably—as are great many of those publications in the bureau of equipment from time to time—corrected. It refers here to "lights;" this was probably rebound and sent to an agent to sell and the date it was sent to the agent for sale is the date there and it does not refer at all to the——

Q. I don't ask you that. Lieutenant, where were you stationed before you went to the Hydrographic office?

A. I was on the U. S. S. *Vermont* for one month prior to my going to the Hydrographic office.

Q. And before that, last summer, where were you?

A. I was in command of an auxilliary vessel during the war.

272 Q. Your advent to the Hydrographic office in New York was in December, 1898?

A. Yes, sir.

Q. For the first time?

A. For the first time.

Q. And you had not been engaged in any hydrographic work prior to that for some years?

A. Not as I know of.

Q. Had you been in the Hydrographic bureau in Washington?

A. No, sir.

Q. Will you swear that there was no edition of this book, No. 86, issued between the edition of 1898 and the edition of 1892?

A. I will not.

Q. Do you know anything about it?

A. I can find out from the records.

Q. No. Do you know anything about it?

A. I don't know anything about it except from the records.

Q. That is what you can ascertain. Do you know today, on the stand, as you are now, whether there was any edition between those dates?

A. I do not.

Mr. HUGHES: I now read from Libellant's Exhibit 21 for identification, the date of the imprint, "Washington; Government Printing Office, 1892." Also the date of the preface, "U. S. Hydrographic Office, March 27, 1892."

Redirect by counsel for libellant.

By Mr. HUGHES:

Q. I call your attention to the fact that the parts offered in evidence on pages 122 and 123 in regard to the reef, and read in evidence on page 5 with regard to the squalls and currents are in the original type, and I will ask you whether corrections made in this book subsequent to the original date of issue are not indicated in blue print at the tops of the various pages?

A. That refers you to a light list with regard to any changes made with reference to lights.

Q. I ask you if the corrections, or statements or additions after the original date of issue are not in blue stamp?

Mr. BARTLETT: I object to that as leading.

273 A. I don't know that I quite understand you. That calls attention to a change, possibly, in the char-cter of the light.

Mr. BARTLETT: I object to that as guessing; that unless the witness stamped them on and knows something about it he is not competent to testify.

Mr. HUGHES: I wish to call the attention of the court to the fact that the changes after the different issues are stamped on the pages.

Mr. BARTLETT: Who put those blue marks on? It doesn't matter, it is of no consequence.

The COURT: If the witness is acquainted with any explanation more than appears on the face of the book it is proper to allow him to testify to it.

By the COURT:

Q. On various pages of this book I find stamped at the upper right-hand corner the words "refer to light list"?

A. Yes, sir; I see that.

Q. Have you any knowledge with regard to the stamping of those words here, anything more than what appears?

A. If that is official? I know what it refers to, yes, sir. Is that what you want to know?

Q. If you do know, yes. What knowledge have you about this?

A. The light-house board publishes what they call a "light list, buoys, beacons and aids to navigation," and the latest changes——

Q. How often are those changes made?

A. As often as material. Changes are made usually once in six months, and we keep the latest supply on hand and give them freely to navigators who ask for them. By referring to that "light list" you find the latest information relating to the lights which, on that page may appear where that stamp is.

Q. And that is the object of this stamp, is it?

A. Yes, sir.

Q. Do you know whether these words stamped here are
274 contemporaneous with the original issue of the book or are put on there later?

A. That is a correction, sir, put on later.

Mr. BARTLETT: I move to strike out that exhibit on the ground that it appears——

The COURT: No.

By Mr. HUGHES:

Q. This paper which is pasted on the cover of the book, with the date May 4, 1898, and the statement "sailing directions corrected to date of issue"?

The COURT: Hadn't you better frame that question differently?

Q. Will you please explain this paper that is pasted upon the inside cover of the book and state whether it was put there subsequent to the original issue of the book or not?

Mr. BARTLETT: I object to the question as incompetent, improper and calling for an explanation as to the contents of a paper which speaks for itself.

The COURT: That does not call for any contents of the paper. I allow that.

Mr. BARTLETT: I except.

A. This paper that is pasted in here—when it was pasted in I don't know, it may have been prior to May 4, certainly not after, because it is stamped May 4, 1898; this book was originally issued in 1892; this is simply a form that is pasted in here to show the date of issue and also for the owner of this book to enter on the receipt the numbers of notices to mariners that applied for correction in this book, and also to indicate to him when he refers to that book whether he has made the correction on his own chart to conform to the notice.

Q. You know this book was issued long prior to May 4, 1898, don't you?

A. I presume so; in 1892 it was issued——

275 Mr. HUGHES: I will offer in evidence the book which has been marked Libellant's Exhibit 21 for identification.

Mr. BARTLETT: I object to any part of the book except that which refers to this particular neighborhood of the Cuban waters.

The COURT: Mr. Bartlett, you asked the question as to the papers pasted on the cover. If you withdraw that, I will not admit the book as a whole in evidence, but that is necessarily connected with these other questions.

The book is marked Libellant's Exhibit 21, April 24, 1899.

Recross by counsel for respondent.

By Mr. BARTLETT:

Q. When did you ever see a slip like that before?

A. I can't recall when I have seen it, but I have seen it.

Q. Are there any in your office now?

A. No, sir, those are more for the benefit of the merchant marine than they are for our use. We have a different form for the navy on board ship.

Q. You say this could not have been issued after May 4, 1898, this book, because it is stamped "Issued May 4, 1898." Do you mean by that that the stamp mark is infallible as showing the date of issue in any office?

A. From the main office, yes, sir.

Q. Suppose there is an error in the stamp?

A. That may possibly be, but I accept that as officially correct.

Q. You assume it is?

A. I assume it is.

Q. If the later edition was issued the end of April, 1898, why didn't they get that on the 4th of May? Why did the old edition go out in May, 1898, or don't you know?

A. I can't answer why it went out.

Q. You don't know anything about it?

A. I don't know anything about why that went out any more than any other. It was corrected up to that date, and is as good as that one that was issued in April or even in May, if there are no corrections following in May after May 4. That book is corrected up to May 4, and is so stamped.

276 Q. Which book?

A. That book there.

Q. You don't tell us that you know when that was pasted in this book?

A. I did not say I did; it may have been pasted in in April.

Q. All we know is that that book assumes to be correct in 1892?

A. No; it assumes to be correct to May 4, 1898, and I assume it is.

Q. Just because this blank paper is pasted in here with no official certificate?

A. That seal up there is an official seal and may be imitated, but I don't think it is likely that it is imitated.

Q. Couldn't any man who obtained one of these blanks such as are to be found in any library in reference to the library have pasted it in this book?

A. You are asking me a question that I do not understand.

Q. Is there any official certificate there?

A. I consider that an official certificate, yes.

Q. Without any signature?

A. Without any signature.

Q. And without any seal?

A. The seal is there on the top.

Q. It is no more the seal than the stamp on the head of any official paper.

Mr. HUGHES: Hasn't this line of examination been exhausted, your honor?

Q. You have had experience, you say you are familiar with these hydrographic charts?

A. I am familiar with the use of them, I know how to use them; I know how to navigate.

Q. You are familiar with the chart in evidence?

A. I have used that chart.

Q. When was the United States survey made from which that chart was compiled?

A. The United States has made no survey on the coast of Cuba until recently, until after the close of the war. They have two vessels down there now making the survey.

Q. Up to the time these books were issued there never had been a United States survey of the coast of Cuba?

A. I won't say that, because the Spanish government
277 never allowed us to make any survey on the Cuban coast.

Q. Won't you answer my question? I asked you whether there had been or not, not who allowed it.

A. No, sir.

Q. There has been no United States Government survey?

A. Not on Cuba.

Q. Up to the time of the publication of either of them?

A. Not to my knowledge.

Q. Isn't it the fact that these maps and the maps that you have put in evidence are not compiled from any United States data at all?

A. Yes, there are United States data on that—information given by ships of war that visited those parts.
Q. What is the original source?
A. The Spanish surveys and the British surveys.
Q. That is compiled from those two sources?
A. Yes, sir, from such information as they had received from time to time from the commanders of our own ships.
Q. But the original source is the British and Spanish surveys?
A. Yes, sir.
Q. Or, in other words, the British and Spanish charts?
A. Yes, sir.
Q. You don't know anything about this coast yourself, do you?
A. I navigated around there all summer by myself.
Q. Which side?
A. North and south.
Q. Did you have one of those blue books on board?
A. I did.
Q. Which one?
A. I had that one and several others. I had No. 86; I don't remember the dates of them.
Q. Is that of 1892 or 1898?
A. I don't remember the dates; I know I had 86.
Mr. HUGHES: Both are No. 86. The number refers to the fact that it is the Caribbean sea and adjacent waters.

278 WILLIAM L. MOORE, recalled as a witness on his own behalf, testifies:

By Mr. HUGHES:

Q. I show you a paper purporting to be an agreement of suretyship and I call your attention——

Mr. BARTLETT: I object to the witness being asked about the paper unless it is offered in evidence.
The COURT: It will have to be identified.

Q. I show you Exhibit 12 for ident., and I will ask you if you received that paper.
A. This one or one like it.
Q. You are able to say that you received that or a counterpart?
A. Yes, sir.
Q. Now I show you Exhibit 5 for ident.——

Mr. BARTLETT: All this is taken subject to my objection that it is incompetent, improper, and immaterial.

Q. I show you Exhibit 5 for ident., and I produce a paper which purports to be a counterpart and ask you if you received that.

Mr. BARTLETT: I object unless the paper is in evidence.
Mr. HUGHES: Will you admit that this is a counterpart?
Mr. BARTLETT: I don't admit anything.

A. I received a paper exactly like that.

Mr. HUGHES: We offer in evidence the paper shown to the witness.

Mr. BARTLETT: The simplest way would be to ask the witness if he received all these alleged charter-parties and bonds, and he would say yes.

The WITNESS: I am quite sure those are the papers that were delivered to me.

279 Mr. BARTLETT: I object to the witness being examined as to the papers unless they are in evidence.

Mr. HUGHES: One of them is Exhibit 12.

The COURT: I receive that.

Q. I now call your attention to another paper which I show you and I will ask you if you received that?

Mr. BARTLETT: I object to that as incompetent, improper, irrelevant and immaterial.

The WITNESS: That has my mark on it there.

By the COURT:

Q. You did receive that, did you?
A. Yes, sir.

Mr. HUGHES: We offer the paper in evidence. It shows it was executed by the Sun Printing and Publishing Company and is acknowledged before a notary.

The COURT: How did he get it?

By Mr. HUGHES:

Q. You received it from whom?
A. From Mr. Manning.
Q. From Mr. Thomas Manning?
A. Yes, sir.

By the COURT:

Q. When did you receive it?
A. (Referring to the paper.) A day or two after the 14th, after its date.

By Mr. HUGHES:

Q. That is May 14, 1898?
A. Yes, sir.

Mr. BARTLETT: I object to the admission of the paper on the grounds that it is incompetent, improper, irrelevant and immaterial; and on the ground that the respondent is not connected with it in any way.

Q. This is the paper that you received from Thomas Man-
280 ning, as I understand it. Did you receive it at the same time that you received the paper I now show you?

Mr. BARTLETT: What has happened to the other exhibit offered?

A. I received those two papers.

Q. Did you receive this charter-party dated May 14, 1898, and this agreement of suretyship dated May 14, 1898, both from Thomas Manning?

A. Yes, sir.

Q. About what time?

A. I can't remember exactly the date, a few days after that.

Q. A few days after that—May 14, 1898?

A. Yes.

Mr. HUGHES: We now offer in evidence the charter-party and agreement of suretyship which are counterparts, as appears on their face, of Exhibits 4 and 5 for identification.

Mr. BARTLETT: I object to the papers as incompetent, improper, irrelevant and immaterial; and on the ground that they have not been properly proven; and further, that they are in no way connected with the respondent; that the signature has not been proven or the acknowledgment.

The papers are marked Exhibits 4*a* and 5*a* for ident.

Q. With regard to the paper marked Exhibit 12—the agreement of suretyship—at the same time that you received that paper, did you receive the paper I now show you, which is the charter-party of April 1, 1898?

A. Yes, sir.

Q. From whom did you receive that?

A. From Thomas Manning.

Q. Is that charter-party of April 1, 1898, identical with the paper which has been marked Exhibit 3 for ident., omitting the pencil interlineations which I see here?

A. Yes, sir.

Mr. HUGHES: We offer the paper in evidence.

281 Mr. BARTLETT: I object on the same grounds as last stated; and on the further ground that the paper has been mutilated by pencil memoranda.

The paper is marked Libellant's Exhibit 3*a* for ident.

Q. I show you a letter dated April 1, 1898—marked Exhibit 1 of March 15, 1899, in connection with the deposition of Olaf Petersen—and I will ask you if the signature to that letter is in the handwriting of Thomas Manning?

A. I should say it was undoubtedly.

Mr. HUGHES: We ask for the purpose of this record that the testimony of Capt. Atkinson as to the valuation of the yacht *Kanapaha*, and as to the value of other yachts, between pages 70 and 80 of his deposition be stricken out; save only the statement of Capt. Atkinson that a yacht has no market value.

The COURT: I shall strike out nothing from the deposition. I will note that on this hearing no evidence as to damages will be considered, that all such evidence is to be reserved for hereafter.

Mr. HUGHES: We do not ask that it be stricken out of the deposi

tion, but that it be stricken out from this record, the deposition being in one aspect of the case entirely before your honor.

The COURT: I rule that all the evidence in Capt. Atkinson's deposition relating to damages is not considered as received upon this present hearing, but that that evidence and all other evidence on damage is reserved for future consideration in case any decree should be found for the libellant.

Mr. BARTLETT: Evidence as to the condition of the yacht, all that stands of course?

The COURT: Do you mean her seaworthy condition?

Mr. BARTLETT: Her general condition, yes.

282 The COURT: No evidence on the question of damages is considered at this time.

Mr. HUGHES: We understand that that includes the evidence as to the value of the yacht?

The COURT: Of course.

Mr. BARTLETT: I offer in evidence all the minutes of the board of trustees of the Sun for the year 1898.

Mr. HUGHES: We object to their admission as incompetent, immaterial, and as not binding upon the libellant; that the absence of any resolution relative to this transaction in nowise affects the libellant.

Objection overruled. Libellant excepts.

Page 182 of the book of minutes is marked Respondent's Exhibit B, April 24, 1899.

LORING T. HILDRITH, being duly sworn and examined as a witness for the libellant, testifies:

By Mr. HUGHES:

Q. Have you compared Exhibits 3 and 3*a* for ident.?

A. I have.

Q. Will you state whether or not they are identical?

A. They are identical in every way, signatures and contents.

Q. I show you also Exhibits 4 and 4*a* for ident., and ask you if you have compared those?

A. I have.

Q. Are they identical?

A. They are identical with the single exception that in the signature "Thomas Manning" in one there is no designation of him as agent; and in the other there is a designation "Thomas Manning" as "Agent." That is the only difference between the two. The printed part is identical.

By the COURT:

Q. Which is the one that has Mr. Manning's signature without "Agent"?

A. 4*a*.

283 By Mr. HUGHES:

Q. I show you Exhibits 5 and 5*a* for ident.

A. I have examined these and find them identical in every particular.

STEPHEN B. ATKINSON, being duly sworn and examined as a witness for respondent, testifies:

By Mr. BARTLETT:

Q. You are the same Capt. Atkinson—S. B. Atkinson—whose deposition has been taken in this case?
A. Yes, sir.
Q. To what place does the Ward line in this city run?
A. The Ward line runs to Havana and Nassau and Santiago, Cienfuegos and Manzanilla.
Q. Would there be any occasion for an officer employed in the Ward line to go along the old Bahama channel near Nuevitas?
A. No, sir.

Mr. HUGHES: We object to that as irrelevant; that the object appears to be to criticise the testimony of Capt. Knight, whose testimony was that he has acted as pilot all along the north coast of Cuba and has been there for years.
Objection overruled. Libellant excepts.

Q. Would there be any occasion for an officer employed in the Ward line to go along the old Bahama channel near Nuevitas or by the harbor of Nuevitas del Principe?
A. No, sir.
Q. Prior to the accident or the stranding of the *Kanapaha* had you seen any British chart or any chart containing any outline of the reef upon which the vessel was wrecked?

Mr. HUGHES: We object, that all this line of examination has been gone into in the Captain's deposition.

A. Not any.
284 Q. In the testimony of this Mr. Knight (p. 199) he speaks of the reef lying about seven to nine miles from the eastern poin-, about two miles off the eastern point of the entrance to Nuevitas harbor: "Q. Lying seven to nine miles E. N. E.? A. Running parallel with the shore very near." What should be the point of the compass indicated there?

Mr. HUGHES: We object.

Q. How does the reef lie, in what direction as compared with the shore line—the reef upon which the yacht stranded?
A. The direction of the reef? About E. S. E., S. E. by E. or E. S. E., running parallel with the shore.

By the COURT:

Q. Do you know for how long a distance the reef runs?
A. About seven to nine miles, from Eastern point to Point Guanador.
Q. Does that include Nuevitas?
A. That is seven miles to the entrance of Nuevitas; Guanador

point is seven miles from the eastern entrance into Nuevitas harbor, about where the wreck lies.

Q. What is Eastern point?

A. Eastern point is the entrance, or the east side of the entrance into Nuevitas harbor.

By Mr. BARTLETT:

Q. Was that reef indicated on any chart on board the *Kanapaha* at the time of the wreck?

A. It was not.

Mr. HUGHES: We object, that the chart is in evidence and will show for itself.

Q. I ask the broad question, "any chart"?

Mr. HUGHES: We object to that as secondary evidence.

Q. How far is Cape Lucretia from Nuevitas del Principe?

A. Speaking from memory I should judge about 100 miles, about in the neighborhood of that.

285 Q. It seems to have been intimated in the testimony of Capt. Knight that you should have taken bearings on the day of the accident, prior to the accident. Please state why you did not take bearings on that day, if you did not.

A. The reason why I did not take bearings was that I had no well-defined object to take bearings of.

Q. There was no well-defined object from which you could take bearings?

A. From which I could take bearings.

Q. There was no promontory or headland?

A. No, sir; not any headland or promontory that I could distinguish or know that it was on the coast line; it might be two or three miles back from the coast which would be very dangerous to take cross-bearings from and put you in a wrong position. If you have a light-house or any well-defined headland that you are sure of, your cross-bearings or four-point bearings will give you a position very correctly.

Q. This witness would seem to have intimated that certain bearings could be taken off Neuvas Grandes from some little hummocks: "Q. Is there not near Neuvas Grandes some high ground? A. Little hummocks, not extremely high. Q. Enough to enable one to take reckonings? A. Yes, we take bearings there." Do you know the coast of Neuvas Grandes?

A. Do I? No, sir.

Q. Was there any high land anywhere along passed by you in the afternoon from which you could have taken bearings?

A. No, sir.

By the COURT:

Q. About what time was it she struck?

A. About 7.30.

Q. How long was that after sunset?

A. About an hour and twenty minutes, I should judge from memory.

By Mr. BARTLETT:

Q. Fully dark then, was it?
A. Oh, yes; very dark.
Q. It must have been half an hour or an hour after dark?
A. I should think fully an hour after dark or an hour and
286 a quarter; I guess it would be nearer an hour and a half, for I expected to make the light at 6 o'clock.

By the COURT:

Q. Where were you making for?
A. Havana.
Q. Sailing west?
A. Yes, sir; the last course I steered was N. W. by W. through the old Bahama channel.

By Mr. BARTLETT:

Q. This witness Knight was asked, "Q. I will ask you whether in steaming along the north coast of Cuba on a N. W. course to make the old Bahama channel and at the rate of 11 to 12 knots an hour, so that at about half past seven the steamer is found about seven miles east of the Eastern Point light, it would be possible in clear weather, if you were in sight of shore most of the day, to ascertain up to and including sunset the true position of the steamer. A. Yes, sir." Was there anything that you could have done to ascertain the position of the steamer nearer than you did?
A. No, sir; nothing.

Mr. HUGHES: We object.
The COURT: I allow the testimony.

Q. You took every precaution, did you?
A. Yes, sir; always do.
Q. Where was the steamer about half past seven, do you know? How many miles east of the Eastern Point light?
A. About seven miles east; about seven miles to the eastward of East Point light.
Q. An implied criticism of you seems to have been made in the question put to Capt. Knight: "Q. It isn't safe to run for an object when you expect to see it and don't see it, it isn't safe to run your distance up?" Did you run for any light?
A. No, sir.
Q. And were you standing off shore?

Mr. HUGHES: This whole matter was gone over and the witness was cross-examined. It is very difficult to object to these
287 questions intelligently because your honor has not read the deposition. As matter of fact, unless we reopen the whole testimony of this witness all this should be excluded.
The COURT: I can't tell about that now.

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Q. Did you make a report of the loss of the steam yacht *Kanapaha* to the board of inspectors at New Orleans?
A. I did.
Q. Is that a true and correct copy of the report made that I show you, and the whole of such report?
A. Yes, sir.
Q. True and correct?
A. True and correct.
Q. Was it made by the identical typewriter, were they duplicates?
A. It is the same.
Q. It is a duplicate, an original made at the time?
A. Made at the time.
Q. You saw it made?
A. I saw it made; yes, sir.
Q. And you compared them?
A. Yes, sir.
Q. And this is the one filed by you in New Orleans?
A. This is a copy or duplicate of the one filed by me in New Orleans.

Mr. BARTLETT: We offer the report in evidence.
Mr. HUGHES: We object.

Preliminary cross.

By Mr. HUGHES:

Q. Is this your signature?
A. Yes, sir.
Q. When did you first see this paper?
A. In New Orleans.
Q. This paper that I now hand you, is that your signature to that paper?
A. Yes, sir; that is my signature.
Q. Is this the original report?
A. This is the original report made in the St. Charles hotel in New Orleans.
Q. Didn't you file your original report?
A. Yes, sir.
Q. Is this the one you filed?
A. That is a duplicate.
288 Q. Made by whom?
A. By the same parties that made the other.
Q. When was this duplicate made?
A. On or about the last of September, near the last of September; that is the time it was typewritten in New Orleans.
Q. Were you there at the time?
A. I was.
Q. Did you get this at the time?
A. I did; had it in my possession ever since.
Q. Where was it when your deposition was taken?
A. With my effects at that time; I hadn't my effects with me at the time.

Q. Where was that?

A. When I was here before? I think it was in Boston, probably; I don't remember just exactly where they were because I had been traveling a good deal of the time.

Mr. HUGHES: We object to the admission of the paper on the grounds that it is a declaration of the witness not admissible in evidence, that it is not testimony, and that it in no way binds the libellant; also that it is incompetent. Of course the last paper attached here is not offered.

Mr. BARTLETT: We offer the whole.

Mr. HUGHES: We object to it on the same grounds just stated; also that it is a copy of a paper in no way identified; that it is a hearsay statement in no way binding upon the libellant.

The COURT: I exclude both of them. He can testify as to everything that is in the report and can refer to it to refresh his memory.

Q. Refresh your memory by referring to the paper and tell us what you did.

Mr. HUGHES: We examined this witness fully and a great deal he said he did not remember and a great deal he refused to state. Now we object to his reading off from this report and incorporating that in his testimony as though it were his present recollection.

289 We think he should be interrogated as to what he knows about this report, and what he does not know, and on what part he relies upon the paper in order to testify.

The COURT: The objection is perfectly good. The proper way is to allow him to refresh his memory upon any point he does not recollect.

Q. What time did you pass, on the morning of the 5th of September, Cape Lucretia? If you want to refresh your memory, do so.

A. I couldn't give you the time exactly.

Q. (Counsel hands the report to the witness.)

Mr. HUGHES: I want to know whether the witness on looking at that paper means to say that he now recalls, and is prepared from his memory to state, the time.

A. It was some time in the morning of that day of the wreck. (Referring to the report.) "8 a. m., land westward of Cape Lucretia."

Q. Did you change your course at that time?

A. (Referring to the paper.) Yes, sir.

Q. To what?

A. W. by N. ¾ N.

Q. At 5 p. m. that afternoon did you change your course again?

A. (Referring to the paper.) Yes, sir.

Q. In what direction?

A. To N. W. by W.

Q. For what point?

A. For a course parallel to the coast for old Bahama channel, eastern entrance.

Q. Was there a steamer in your rear at that time?

Mr. HUGHES: We object to that as immaterial.

Q. Was there a steamer astern?

A. No, sir; not at that time.

Q. When was there? When did you see the *Albis?*

Mr. HUGHES: We object to that as immaterial.

Objection overruled. Libellant excepts.

A. I saw the steamer that afternoon; I think she hove in sight about 2 o'clock.

By the COURT:

Q. Where was she, astern?

A. No, sir; she was on my starboard beam to the northward.

290 Q. How far away from you, do you think?

A. About seven miles at that time; seven to eight miles.

By Mr. BARTLETT:

Q. How far astern was the *Albis* at the time of the stranding of your boat?

Objected to as immaterial. Objection overruled. Libellant excepts.

A. I should judge about two miles, two to three miles, it being dark I couldn't tell exactly.

By the COURT:

Q. Did you see her lights?

A. Yes, sir.

Q. Was she directly astern or on your quarter?

A. She was directly astern steering the same course as myself.

Q. Did you say about how much you estimated she was astern?

A. I should judge by her lights that she was about two miles astern; two or three miles.

Q. Was she steering the same course that you were at the accident?

A. She was steering exactly the same course at dark that we were going and she continued that course and was in our wake when we grounded.

Q. Did you see both her colored lights?

A. Yes, sir, shortly after we stranded.

Q. How were they just before you stranded?

—. I could see her masthead light all the time and, of course, after we stranded I didn't take notice.

Q. Before you stranded, when you saw her lights, do you remember whether both colored lights were in sight?

A. She was right in our wake; I should say both colored lights

were—both should have been showing; I don't think her lights were ever out of sight.

By Mr. BARTLETT:

Q. After the *Kanapaha* struck, did you signal the *Albus* with lights?

Objected to.

291 By the COURT:

Q. Did she carry range lights?

A. No, sir, only side lights and masthead lights. I fired guns and showed lights.

Q. As soon as you stranded?

A. Yes, sir, to warn the other ship there that was coming astern of me.

By Mr. BARTLETT:

Q. At the time of the accident were you running for any lights?

A. No, sir, I was running for the eastern entrance to the old Bahama channel, a distance from the shore that I judged six miles, which would carry me in sight of Martenillos Point light.

Q. But you were not running for any object such as a light-house?

A. No, sir. A course N. W. by W. laid down on the chart will show you is not even on to the land, it is a course parallel with the shore, which would carry me, if I had been the distance off shore that I calculated, directly into old Bahama channel.

Q. Is the reef upon which the *Kanapaha* struck shown on Exhibit 19?

A. This chart does not show any reef where the *Kanapaha* struck. The wreck lay off Guanda point a mile and three-quarters.

Q. Did you receive a letter from the master of the *Albus?*

A. I did.

Mr. BARTLETT: I offer the letter in evidence.

Objected to as immaterial. Objection sustained.

Q. Did you file a report in writing before the board of inspectors at New Orleans?

A. I did.

Q. Did they inquire of the circumstances of the wrecking of the vessel?

A. There was no official inquiry. They exonerated me.

Mr. HUGHES: We move to strike out the last sentence of the answer.

Motion granted.

Q. What did they do in the matter?

292 Mr. HUGHES: We object to the question as incompetent. Objection sustained.

Mr. BARTLETT: I offer to show that an inquiry was made by the inspectors in New Orleans, that a report in writing was submitted

by Capt. Atkinson, and that such report was deemed satisfactory by the board.

Mr. HUGHES: We object to that as immaterial and incompetent.

Objection sustained. Respondent excepts.

Cross-examined by counsel for libellant.

By Mr. HUGHES:

Q. What light did you expect to see at 6 o'clock?

A. I expected to see Maternillos Point light.

By the COURT:

Q. Is that the light at Nuevitas?

A. Just a little to the westward of the entrance to Nuevitas.

Q. That is the light which was visible seventeen miles, as you said?

A. That is the light.

By Mr. HUGHES:

Q. The *Albis* was bound for Nuevitas, was she not?

A. She was.

Q. Is it not a fact that at 8 o'clock in the morning when off Cape Lucretia you changed your course to W. by N. ½ N. to make Maternillos at Nuevitas?

A. Yes, sir. Just allow me to correct that answer a little—to put me in position to see the light in passing.

Q. Isn't it a fact that you changed your course, as I have stated, to make Maternillos at Nuevitas?

A. Yes, sir, so I could see it while passing.

Q. And didn't you continue on that course from 8 o'clock in the morning until 5 o'clock in the afternoon?

A. I did.

Q. Where were you at 5 o'clock, when you changed your course, 5 in the afternoon?

A. I should suppose I was about 25 miles to the eastward of Maternillos or 30 miles.

293 Q. Did you know at that time where you were?

A. I thought I did.

Q. Where did you think you were at that time?

A. Just where I was shaping my course for, for the old Bahama channel.

Q. Where did you think you were at 5 o'clock in the afternoon when you changed your course?

A. At sea on the north side of Cuba.

Q. Whereabouts at sea on the north side of Cuba?

The WITNESS: Your honor, I think I have sufficiently answered that question.

The COURT: If you have stated it as near as you can, you have.

A. I was east of the entrance of Nuevitas.

By the COURT:

Q. How far from shore did you estimate you were at 5 o'clock?

A. When I changed my course at 5 o'clock I give the course N. W. by W., I calculated that would carry me six miles off.

Q. That is not the question asked. Where you were at 5 o'clock, when you changed, was the question, and you said 25 or 30 miles east of *Maternillos*?

A. About that.

Q. About how far off shore were you at that time?

A. I would be considerably farther off shore there than I would be in passing. I shaped my course to pass outside, six miles outside of Maternillos light. I would have to carry that course back and measure.

Q. Could you see the shore at that time?

A. I could see the land, but I couldn't see the shore to make out anything definite on shore.

By Mr. HUGHES:

Q. To what course did you change at 5?

A. N. W. by W.

Q. Did you continue on that course up to the time of the accident?

A. Yes, sir.

294 Q. I show you on this chart which has been marked Libellant's Exhibit 19, a dotted line off Nuevitas del Principe?

A. Yes, sir.

Q. Extending nearly to the meridian of 77 degrees. Tell me what that dotted line indicates?

A. That dotted line indicates the reef.

Q. Part of the reef upon which the vessel stranded?

A. No, sir, the vessel didn't strand on that reef at all. There was no reef where the vessel stranded. If you allow me to correct you, that is where the vessel stranded (indicating on the chart).

Q. You don't understand my question. There is only one reef there—I don't mean on the chart, but at the place?

A. There is a reef running parallel with the coast on the English chart, you can see it.

Q. I will ask you if this dotted line indicated on this chart—Libellant's Exhibit 19—is not a part of the reef upon which the *Kanapaha* stranded?

A. No, sir, she did not strand there.

Q. That is not the question.

A. A part of the reef, yes, you can put it in that way if you wish.

By the COURT:

Q. The dotted line on Exhibit 19 which part of the reef on which she stranded?

A. It is the part of the reef at the entrance to Nuevitas, about four miles from where the ship stranded.

Q. To the eastward or westward?

A. Westward.

Q. That is the west part of the reef?
A. Yes, sir.
Q. And about four miles to the westward of where the ship stranded?
A. Yes, sir.

By Mr. HUGHES:

Q. At what rate of speed had you been going all that day?
A. 12 knots, 11 to 12 knots according to steam.
Q. Are you not familiar with the fact that the highlands along the coast of Cuba eastward of the Bahama channel enable one to check his reckoning and to keep a proper offing?

295 Mr. BARTLETT: I object to that as a statement of fact not proven and as assuming such was the case.
The COURT: I allow it on cross-examination.

A. No highlands that may be known to a master will enable you to check your position.
Q. I will ask you when, during the day of the accident, you did verify your position with reference to the shore?
A. When I passed Cape Lucretia.
Q. Did you at any time between 8 o'clock in the morning and the time of the accident on the day in question endeavor to verify your position off shore?
A. I did at noon.
Q. Where were you at noon?
A. About Cape Lucretia at noon.
Q. What did you do to verify your position at that time?

By the COURT:

Q. I thought you said at 8 a. m. you were off Cape Lucretia?
A. No, sir, I said I made the land to the westward of Cape Lucretia; I was way to the eastward of Cape Lucretia at that time. I made the land some 30 or 40 miles to the westward of Cape Lucretia—just what I stated in my report.

By Mr. HUGHES:

Q. You said in your direct examination that at 8 o'clock the land westward of Cape Lucretia was about six or seven miles distant. Didn't you intend to be understood that you were off Cape Lucretia about six or seven miles at 8 o'clock the day of the accident?
A. Yes, I thought I was about six miles off shore of Cape Lucretia when I passed there the day of the accident.
Q. And that you were six or seven miles off Cape Lucretia at 8 o'clock in the morning?
A. No, I wasn't up to Cape Lucretia at 8 o'clock in the morning and I don't think I stated so.

Q. Is it your best recollection, and do you mean now to
296 testify that you were off Cape Lucretia at noon and not before?

A. I wouldn't be positive of any particular hour; I was off Cape Lucretia some time about the middle of the day.

Q. Did you then verify your position?

A. I did.

Q. In what manner?

A. By bearings—Cape Lucretia light-house that I knew.

Q. How long was it before you left the vessel after the accident to the yacht *Kanapaha?*

A. Before the vessel was finally abandoned?

Q. Before you left it that night?

A. Before I left it that night? Remember I left it on two or three occasions; I left it in my boat to board that steamer to warn her of her danger; and then I left her again to put my passengers on the *Albis* and I returned again to the ship; I finally abandoned the ship about, I should judge, 2 o'clock in the morning when we got on board the *Albis.*

Q. Did you bring away your log?

A. I did not.

Q. Did you make any effort to save your log?

A. I did not have the log.

Q. Didn't keep a log?

A. No. The mate kept the log.

Q. Did you make any effort to save the log that the mate kept?

A. No, sir, I didn't see it at all. Everything was in confusion.

Q. Who was the mate?

A. A man by the name of Parker.

Q. Did you make any efforts to save your charts?

A. The chart I was using at the time when I wanted it I found it had been blown out on deck and was destroyed, it had blown out of the pilot-house, washed out.

Q. Did you save any of your charts?

A. No, sir.

Q. Did you try to?

A. No. I had plenty of other work to do, I wasn't saving any charts, sir.

Q. After you left Cape Lucretia did you endeavor at any time during the day of the accident to verify your position off shore?

A. I did not, for the reason——

Q. Did you make any observation that day?

Mr. BARTLETT: Let him finish his answer.

297 A. (continued.) For the reason that I had no definite object to get a bearing of.

Q. Did you take any observations on that day?

A. I did not.

Q. Did you take any at noon?

A. No, sir, not observations of the sun—I presume you mean. Do you mean observations of the sun?

Q. I mean to determine your longitude and your latitude.

A. I did not. I determined my latitude and longitude by the

bearings of the land, by the bearings of Cape Lucretia light-house and by my log.

Q. You did not take any observations of the sun?

A. No, I did not.

By the COURT:

Q. How many miles were you off from the light-house?

A. Six miles.

By Mr. HUGHES:

Q. Do you mean to say that between Cape Lucretia and the point which the vessel had reached at the time of the accident there were no headlands or light-houses which would enable you to take your bearings so as to verify your position off shore during the afternoon of that day?

A. For any one who had a good local knowledge of the coast I think there would be; any man who professes to be a pilot knows the headlands and knows whether the headlands or mountains are on the coast or in the interior; if he is able to distinguish between the two he is able to get his place by cross-bearings; but if you don't know you better leave it alone, it is rather a dangerous operation.

Q. At all events you left it alone?

A. I did.

By the COURT:

Q. At sunset could you see the shore?

A. I could see the land, I couldn't see the shore to say or swear it was the shore; the coast line is very low along that part of the coast.

298 Q. No dwellings or huts or anything of that kind scattered along?

A. No, sir, nothing in sight.

By Mr. HUGHES:

Q. You know Point Manati?

A. I know about where it is.

Q. You know there is high land at Point Manati, do you not?

A. Somewhere in that vicinity I think there is some high land, as near as I can remember.

Q. Don't you know that at Point Manati there is an inlet?

A. If I was looking at that chart probably I would know about it.

Q. I will show the chart to you (Exhibit 19) and I call your attention to Point Manati.

A. There is an inlet there.

Q. And highlands there, are there not?

A. It shows highlands there.

Q. Do you mean to say that it would not be possible for you to verify your position off Point Manati?

A. Yes, sir, probably, if that is just as it is represented; but there is highlands all around here not marked on that chart. How

am I going to distinguish between that highland here or there? That simply shows the coast line.

Q. Do you mean to say that with that inlet there and with the highlands on each side of the inlet you couldn't determine your position off Point Manati?

A. I wouldn't be sure of it.

Q. And you didn't endeavor to ascertain your position at that point?

A. No, I did not. Those inlets show very plain here, but you don't see those inlets in passing, you wouldn't know where the inlet is; you can't see the inlet in Nuevitas.

By the COURT:

Q. I understand you to say there are a number of highlands scattered around?

A. Yes, sir.

Q. And you had no means of identifying the inlet?

A. There is no way to identify that highland shown on the chart because there is high land back of it, you know.

299 Mr. HUGHES: I refer your honor to p. 106 of the book marked Libellant's Exhibit 21: "Vessels coming from to windward, after passing through either of the northeast Bahama channels, or along the north sides of Puerto Rico and Haiti, generally keep the Cuba shore aboard, where the remarkable highlands enable them to check their reckoning and keep a proper offing, according to the season."

Testimony closed.

Counsel hereupon sum up the case orally: Mr. Hughes for libellant, Mr. Bartlett for respondent.

NEW YORK, *April 25th*, 1899.

Mr. BARTLETT: If your honor please, I move to reopen the case so far as to permit the respondent to call certain witnesses on the question of authorization or ratification by the corporation of the alleged instruments in controversy.

Mr. HUGHES: We object to the granting of the motion upon the ground that after full proofs have been offered by libellant and after respondent has had full opportunity with all the witnesses accessible he now proposes to present proof which he has failed to do before, libellant having presented his argument, having commented upon the absence of certain testimony and certain suggestions having been made by the court as to the inferences to be drawn from the case as it now stands, and we submit that the case should be deemed closed and that no further testimony should be received.

Objection overruled. Libellant excepts.

300 PAUL DANA, being duly sworn and examined as a witness for the respondent, testifies:

By Mr. BARTLETT:

Q. You are the president of the Sun Printing and Publishing Association?

A. Yes.

Q. And you were elected president of the Sun Printing and Publishing Association on or about October 26, 1897?

A. I believe so.

Q. After the death of your father. And since that time you have been president?

A. Yes.

Q. Throughout the year 1898 you were president of the respondent corporation?

A. Yes.

Q. You were present at the meetings of the board of trustees during the year 1898?

A. President or present, did you say.

Q. Present?

A. Present? I think so.

Q. Did you hear anything about or did you know anything about the execution of any alleged charter-parties or bonds in connection with the yacht *Kanapaha* in the months of April or May, 1898?

A. No.

Mr. HUGHES: We object to that as improper at this stage of the case; and further upon the ground that the witness's knowledge or want of knowledge, in view of the fact that he of all others had full opportunity to ascertain the facts, is not binding upon the libellant; and that the testimony is incompetent and irrelevant.

Objection overruled. Libellant excepts.

Q. Have you ever seen the alleged charter-parties?

Mr. HUGHES: We object that the question is too general.

Objection overruled. Libellant excepts.

A. No.

Q. You have never seen any bonds or agreement of surety-
301 ship in reference to the yacht *Kanapaha* assumed to have been executed by Mr. Chester S. Lord?

Mr. HUGHES: We object on the same ground—that it is not binding on the libellant; that the witness has had full opportunity to examine all such documents.

The COURT: As long as it was not brought before the board I think it is competent to show what the individual members of the board of trustees knew about it, and to show that they did not have knowledge, if that is the fact.

Libellant excepts.

A. No.

Q. Those papers in controversy in this suit were executed in May, 1898——

The COURT: That is on the second charter?

Mr. BARTLETT: That is on the second charter, the first is April, 1898.

Q. At the time of the execution of these papers were any of them submitted to you or shown to you?

Mr. HUGHES: We object on the same grounds, and that there is no evidence that they should have been submitted to the witness, or that any inference contrary to authority can be drawn from his answer.

Objection overruled. Libellant excepts.

A. No.

Q. Were you consulted prior to the execution of these papers or at the time of the execution of these papers by Mr. Chester S. Lord as to the execution of any of these papers?

Mr. HUGHES: We object to that as involving a conclusion in the use of the word "consulted," and on all the other grounds already stated.

The COURT: I allow that as matter of fact.

Libellant excepts.

302 A. No.

Q. Mr. Edward P. Mitchell was first elected trustee of the Sun on May 23, 1898, was he not (handing witness minutes of May 23)?

A. The minutes show he was elected on May 23, 1898.

Q. And he was not trustee of the Sun Printing and Publishing Association prior thereto?

A. No.

Q. Mr. Laffan has sailed for Europe, has he not?

A. I believe so.

By the COURT:

Q. When did he sail?

A. Wednesday.

Q. This last Wednesday, last week?

A. No, Saturday.

Q. Last Saturday?

A. Last Saturday.

Q. That is April 22nd?

A. Yes.

By Mr. BARTLETT:

Q. Did you tell Mr. Lord at any time that he could make or execute any charter-party for the respondent corporation—The Sun Printing and Publishing Association?

Mr. HUGHES: We object, that it does not appear that the witness was in a position to instruct Mr. Lord or that his directions one way or the other would affect the issues of this case; that it is incompetent and irrelevant.

The COURT: I allow the inquiry whether any instructions, and what, if any, were given by the witness to him.

Libellant excepts.

A. No.

By the COURT:

Q. Did you give any instructions on the subject?
A. I did not give any instructions.

By Mr. BARTLETT:

Q. On the subject of charter-parties or bonds?

Mr. HUGHES: We make the same objection.
Objection overruled. Libellant excepts.

303 A. No.

Q. In addition to being president of the corporation you were throughout the year 1898 and after the autumn of 1897, the editor-in-chief of the Sun?

A. Yes.

Q. And as such you had general charge of the paper?

Mr. HUGHES: We object to that as calling for a conclusion, as too general; that the facts as to what the witness did should be asked for.

The COURT: I allow the question.
Libellant excepts.

A. Yes.

Q. Did you at any time tell Mr. Macdaniel to pay the insurance on the policies taken out on the yacht *Kanapaha?*

Mr. HUGHES: We object, that the witness' instructions to Mr. Macdaniel are not material or relevant, or competent to bind the libellant; that it does not appear that he was in a position to give instructions on that subject.
Objection overruled. Libellant excepts.

A. No.

Cross-examined by counsel for libellant.

By Mr. HUGHES:

Q. Were you in the city of New York continuously in April and May, 1898?

A. Yes.

Q. Were you at the office of the Sun daily on business days during April and May, 1898?

A. Yes.

Q. I suppose you had occasion to see Mr. Chester S. Lord from time to time during those months?

A. Yes.

Q. Frequently?

A. Daily.

Q. Daily?

A. Daily.

Q. And many times during the day?

A. No.

Q. Were your offices near by each other in the building?

A. Yes.

Q. How near?

A. In different rooms, two rooms apart.

304 Q. On the same floor?

A. On the same floor.

Q. And he was the managing editor, as I understand it?

A. Yes.

Q. I suppose you were aware that news was being obtained for the Sun in regard to the progress of events in Cuban waters in April and May, 1898?

A. Yes.

Q. I suppose you were aware that reporters of the Sun were watching the movements of the United States fleet at that time, were you not?

A. Yes.

Q. Were you aware that the Sun availed itself of any dispatch-boats for that purpose?

A. In general terms, yes.

Q. From whom did you get that information?

A. I got it from several sources. I have seen the mention in the dispatches.

Q. In the dispatches in the paper?

A. Yes.

Q. Do you read the Sun?

A. Yes.

Q. And you have the motto, "If you see it in the Sun it's so"—have you that motto now?

A. No.

Mr. BARTLETT: I object to that as immaterial and irrelevant.

Q. It is true, isn't it? Did you get your news as to the dispatch-boats which were used by the Sun to obtain information as to the progress of events in Cuban waters from the columns of the Sun alone?

A. No, I think not.

Q. Did you ever hear anything about it from Mr. Lord?

A. Yes.

Q. You talked with him from time to time as to news obtained from Cuba and from reporters of the Sun at Key West and on the dispatch-boats?

A. From time to time, yes.

Q. During April and May, 1898?

A. I presume so.

Q. Did you ever take the trouble to inquire as to the names of any of these dispatch-boats which were used by the Sun?

A. I don't recollect inquiring.

Q. Do you now recall the use of a boat by the name of the *Premier?*

A. Yes.

305 Q. And you knew in the summer of 1898 that that boat was used by the Sun?

A. Yes.

Q. From whom did you get that information?
A. Mr. Lord.
Q. Did you get it from anybody else?
A. I may have heard some of the reporters speak of it.
Q. Did you have anything to do personally with the *Premier?*
A. No.
Q. Did you hear at any time during 1898 of the use of a boat called the *Carbonaro* to get news for the Sun?
A. No.
Q. You never heard of that?
A. I never heard of the *Carbonaro.*
Q. Do you mean to say that you don't know now as matter of fact that that boat was used and that disbursements were made in connection with it?
A. The first time I ever heard the name used I heard Mr. Bartlett speak of it coming upstairs here today.
Q. This morning?
A. Yes.
Q. It is not a surprise to you to know that boats were used by the Sun to obtain information as to events in connection with the war with Spain the names of which you had never heard?
A. No.
Q. Did you ever happen to hear the name of the yacht *Kanapaha* before this trial?
A. Yes.
Q. From whom did you hear it?
A. From the same source, I think.
Q. Do you remember any source except Mr. Lord?
A. I wouldn't—I am not sure of any source. I know that I heard it from Mr. Lord. I think I have heard the reporters mention the name and also seen it in the columns of the Sun.
Q. You have seen it from time to time in the columns of the Sun referred to as the Sun's yacht, haven't you?
A. Yes.
Q. You saw it so during the progress of the war?
A. Yes.
Q. Do you recall when Mr. Lord ever mentioned the yacht *Kanapaha* to you?
A. No.
306 Q. You know Mr. Charles R. Flynn?
A. I have met him.
Q. Isn't he a friend of yours, Mr. Dana?
A. No. When I say friend—I might pass Mr. Flynn in the street today and wouldn't bow; we never had any relation——
Q. If you didn't happen to see him or he you?
A. Possibly if we both saw each other.
Q. Isn't it a matter of fact that you had some conversation with Mr. Flynn relative to the getting of a suitable boat to use in connection with the observation of the movements of the fleet for the purpose of information for the Sun?
A. Is this a question?
Q. Yes.

A. No, I never had.

Q. Never had any such conversation?

A. No.

Q. Do you remember the fact that early in April, 1898, the question of getting information as to the progress of events in Cuban waters and in connection with the war was talked of in the Sun office?

A. I presume it was.

Q. You presume it was. Can you recall with whom the conversation was?

A. I presume I spoke with Mr. Lord about it.

Q. Would he be the man with whom you would naturally speak about it?

A. Yes.

Q. Do you recall what was said about it?

A. No. It was only—I can only recall that if anything was said it was in a very rough way.

Q. You didn't endeavor to take charge of those details yourself, did you?

A. No; no more than I usually do. I have no charge of those details.

Q. When you say you have no charge of those details, to what details do you refer?

A. I mean to say details of methods of obtaining news I do not enter into.

Q. Who has charge of that?

A. Mr. Lord, as a rule.

Q. That would cover the obtaining of news as to the Spanish war, I suppose?

A. Yes.

Q. As to any current events of importance?

A. Yes.

307 Q. Where reporters should go and what means should be taken advantage of to get information, so far as the details were concerned you would not concern yourself about them?

A. No.

Q. And as matter of fact in connection with the Spanish war, did you in any way concern yourself with the details in connection with the use of any dispatch-boat used by the Sun for getting information?

A. No.

Q. Not at all?

A. I don't think so.

Q. Who had charge of that?

A. Mr. Lord, I think.

Q. And you understood, didn't you, as editor-in-chief of the Sun and president of the Sun Company, that Mr. Lord was exerting himself to get news for the Sun regarding the Spanish war?

Mr. BARTLETT: I object to that as incompetent.

Objection overruled. Respondent excepts.

A. I understood Mr. Lord was getting news as he always gets news.
Q. In the ordinary course of his business or employment?
A. Yes.
Q. Can you recall whether you ever asked of Mr. Lord what arrangements he was making in regard to obtaining facilities for the reporters of the Sun in their observations of events in connection with the Spanish war?
A. I don't remember any such question.
Q. You don't recall making any inquiry about it?
A. I may have said, "Are your arrangements satisfactory?" something of that sort, in some general terms.
Q. You mean, "Are your arrangements satisfactory" to him?
A. To him, yes.
Q. If they were satisfactory to him they were satisfactory to you?
A. Yes.
Q. You left those matters to him?
A. Yes.
Q. And that was well understood in the Sun office?
A. Yes.
Q. And by the other trustees?
A. I presume so.
Q. I suppose you had occasion to familiarize yourself with the details connected with the acquisition of news perhaps more than any other trustee, didn't you?
A. Yes.
308 Q. And yet you didn't attempt to go into the details of the editorial work in obtaining news?
A. No.
Q. I mean of the work of the editorial department in charge of the managing editor?
A. No.
Q. I suppose you were aware at this time that accounts were kept by the Sun of its disbursements?
A. Yes, as in general.
Q. Who generally had charge of the financial matters of the Sun?
A. The book-keeper.
Q. He would be, of course, under somebody's supervision, I suppose?
A. Yes.
Q. Who of the trustees, for example, what officer or person connected with the board?
A. I don't know that there is any trustee specifically designated for that.
Q. Mr. Laffan had something to do with it?
A. Mr. Laffan, I presume, was closer to the transactions of the book-keeping department than other trustees, as I was generally closer to the transactions of the news-getting.
Q. You were aware, I suppose, that there was kept in the Sun's books an account headed "Editorial expense," in which from time to time there were entered items of disbursements made in connection with the acquisition of news for the Sun? Did you know that?

A. I don't know whether that is called "Editorial expense" or what the heading of it is.

Q. Have you looked to see?

A. I don't recall ever seeing such.

Q. You left the book-keeping to the book-keeper's department, did you?

A. It was in Mr. Lord's hands.

Q. And he had charge of the expenses of the editorial department that were entered in the "Editorial expense" account?

A. No, not the editorial; at least, I don't think so.

Q. I am now speaking of the "Editorial expense" account, all expenses incident to the acquisition of news. Did you have occasion to examine into the moneys paid out for this purpose?

A. No.

309 Q. Did you, at any time, during 1898, or do you now investigate these items personally?

A. I think I may occasionally, I don't recollect; not systematically.

Q. But you don't make a business of keeping yourself informed?

A. No. As long as the accounts seem the same degree of expenditures, I have no reason to suppose there is anything extraordinary.

Q. And that matter of the accounts in connection with the acquisition of news is left to whom?

A. The same parties.

Q. That is to whom?

A. Mr. Lord and the book-keeper.

Q. Did you happen to know that there was an account kept during the period of the Spanish war called the "Spanish war account" in the Sun's books?

A. No.

Q. And did you attempt to familiarize yourself with the details of the accounts of the disbursements incident to getting news as to the war?

A. No. All that I know of the account is it was treated as ordinary accounts; that is all.

Q. That is, all the matters pertaining to the getting of news as to the Spanish war were in accordance with the ordinary course of business?

A. Yes.

Q. And left to the department of which Mr. Lord was the head?

A. Yes.

Q. What do you do in connection with the Sun, particularly?

A. I direct its policy, its political policy.

Q. And write editorials, I suppose, from time to time?

A. Yes.

Q. But so far as the active management of the business of the Sun in connection with the getting of news to print and the seeing that it is put in the always-readable manner in which it does appear in the Sun, you don't take charge of that directly, do you?

A. To a very slight degree.

Q. What, if ever anything, did you ask Mr. Lord in regard to his getting any boats to get information as to events in Cuban waters?

A. I don't recollect asking him anything specifically be-
310 yond the general question which I may have asked him once or may have asked him twice as to how——

Q. When do you recall anything you have asked him?

A. I don't recall anything.

Q. What is the general question you had in mind in your last answer?

A. I think I asked him once or twice, "Are you getting on well? Is your service satisfactory?"

Q. What service satisfactory?

A. The news service.

Q. And in what particular?

A. In the distribution of the men and in their methods of transportation.

Q. And in their use of boats?

A. Generally in the use of boats.

Q. You knew boats were being used by the Sun, despatch-boats?

A. Yes.

Q. As you have said?

A. Yes.

Q. Did you ever ask Mr. Lord for information as to the terms upon which he gotten these boats?

A. No, I presumed he got them on the terms he usually gets his things.

Q. You never made any inquiry as to the terms?

A. No.

Q. And that was entirely left to him, as I understand it?

A. Yes.

Q. It appears that $10,000 was paid to the owner of the yacht *Kanapaha* out of the funds of the Sun on May 14, 1898. Did you make any inquiry with regard to that?

A. I had no knowledge of its payment; it never came to me.

Q. You knew that large payments had to be paid out to provide facilities for the getting of news, didn't you?

A. I presume so.

Q. And that matter, like the others that you referred to, was left to Mr. Lord?

A. Yes.

Q. You had complete confidence in Mr. Lord, didn't you, Mr. Dana?

Mr. BARTLETT: I object to that as incompetent, improper, irrelevant and immaterial, and as not binding upon the corporation.

311 The COURT: There is nothing to indicate the contrary. The witness says matters were left to him. I sustain the objection.

Libellant excepts.

Q. During all the months of April and May, 1898, when, as you

have testified, you were constantly in daily association with Mr. Lord, did you ever ask him how much money he was spending or using in connection with getting news about the progress of the Spanish war?

A. No.

Q. Did you ever ask him what he was paying for any boat that he got in connection with the Spanish war?

A. No.

Q. Did you ever ask him what boats he had obtained?

A. No.

Q. Or from whom he had obtained them?

A. No.

Q. Did you ever ask to look at any papers or ask him whether he had executed any papers to get any of those boats?

A. No. He had boats; we had boats before.

Q. Had you had boats before?

A. Yes; on races and things of that sort.

Q. That is, the international yacht races?

A. Yes.

Q. Boats had been obtained for reporters?

A. Yes.

Q. Have you had other occasions on which boats have been obtained?

A. I don't know.

Q. I suppose that whenever a boat would be desirable to get news you would expect a boat to be obtained?

A. Yes.

Q. And that would be just as much a part of Mr. Lord's duties as to send a reporter to get information of some events in town?

Mr. BARTLETT: I object.

A. Yes.

Q. He was supposed to get the news, wasn't he?

Objected to. Objection overruled.

A. Yes.

312 By the COURT:

Q. These previous boats that you got, as you say, for the races, were obtained through whom?

A. I don't know that. I have never——

By Mr. BARTLETT:

Q. They were hired by the day, were they not?

A. I think they have been hired for a week; I don't know.

By the COURT:

Q. In those cases who obtained them, who hired them?

A. The same party—Mr. Lord.

Q. How long has Mr. Lord been with you?

A. Oh, 20 years.

Q. How long has Mr. Lord had charge of this department of obtaining the news?

A. The same time.

Q. All that time?

A. Yes.

By Mr. HUGHES:

Q. You recall the fact that committees from time to time examined the books of the Sun and reported to the board of trustees, do you not?

A. Yes.

Q. And that after that time you had an auditor instead of an examining committee?

A. Yes.

Q. And that he reported?

A. Yes.

Q. And during the year 1898, as I understand it, the report was made to Mr. Laffan and Mr. Laffan reported to the board?

A. In the matter of auditing?

Q. I understand an auditor reported to Mr. Laffan and Mr. Laffan reported to the board?

A. I don't know how long the auditor has been in power.

Q. At least reports were made during 1898 from time to time?

A. I don't know that as to whether the auditor reported to Mr. Laffan.

Q. I mean as to the reports made to the board during 1898; you remember as a fact that reports as to an examination of the books and their being found correct, were made from time to time?

A. By the auditor?

Q. By some one of the board when you were present?

A. Yes, the board has been reported to; I forgot exactly by whom.

313 Q. You kept a sort of general lookout as to the amount of expenses in Mr. Lord's department, didn't you?

A. Very vaguely.

Q. You had some idea about the amount of money he was spending to get news, didn't you?

A. I think so.

Q. Or has he been with you so long that you left that substantially to him, knowing he would do what was right?

A. I think I have a record every week of certain expenses. I don't think—I don't know that extraordinary expenses would be put down. I cannot answer satisfactorily that question.

Q. My point was, that you had a general idea as to the amount of money that was being spent to get news?

A. As a rule, yes.

Q. You kept yourself sufficiently informed to know that no extravagant outlay was being made or improper outlay?

A. I should think so.

Q. And that was true all through the year 1898 as well as other years, was it not?

A. I presume so.

Q. Your meetings of the board of trustees were held once a month, I believe?

A. Yes.

Q. How long in duration were they, as a rule?

A. How long were the meetings? Very short, as a rule.

Q. 10 or 15 minutes?

A. Yes.

Q. Seldom longer?

A. Not often longer.

Q. At the meetings of the board of trustees you did not take up the question as to what should be done to get news?

A. No.

Q. Matters of that sort were not brought before the board but were left to Mr. Lord, I suppose?

A. Yes.

Redirect by counsel for respondents.

By Mr. BARTLETT:

Q. In all these years with which you have been connected with the Sun do you know of any charter-party or instrument in writing for the hiring of a vessel, other than those of the controversy in this suit, to have been executed by Mr. Lord or by any one on behalf of the Sun?

314 Mr. HUGHES: We object on the ground that the witness shows he had no knowledge.

Objection overruled. Libellant excepts.

A. Anything made by the corporation?

Q. (Read to the witness.) In all these years with which you have been connected with the Sun do you know of any charter-party or instrument in writing for the hiring of a vessel other than those of the controversy in this suit, to have been executed by Mr. Lord or by any one on behalf of the Sun?

A. No.

Q. Any item of $75,000 paid out for news would not attract your attention, I suppose?

Mr. HUGHES: We object that there is no evidence of any item to that amount being paid out.

The COURT: I disallow that question. There has been no testimony to that effect.

Q. Did you tell Mr. Macdaniel at any time to pay premiums on insurance on this yacht *Kanapaha?*

Mr. HUGHES: We renew our objection on the same ground as heretofore stated.

The COURT: I allow the question.

Libellant excepts.

A. No.

By Mr. HUGHES:

Q. Do you recall any case in which you have given Mr. Macdaniel instructions to draw a check for any expense in connection with the acquisition of news?

A. No.

Q. That is a matter with which you don't concern yourself?

A. With the ordinary run of the office in that way I don't concern myself.

By the COURT:

Q. In the course of business does Mr. Macdaniel draw the body of the checks—is that the custom of the business—while others sign them?

A. I think so, yes.

315 Q. Is it your habit to sign checks?

A. I sign most of them.

Q. Do you give directions for drawing the checks?

A. No.

Q. Who is it gives the instructions to draw checks?

A. I imagine checks are drawn against the accounts rendered by the managing editor, for example, Mr. Lord—by Mr. Lord.

Q. Does Mr. Lord give the orders for all checks drawn on account of the Sun?

A. Oh, no; the publisher, the business manager.

Q. He might give them. Do you mean they are given by different heads of departments; is that it?

A. Yes. I will say, for instance, if there is a check for paper, that would be subject to the publisher, because that for paper is a contract; the record of the paper used is kept and the bills submitted by the paper-makers are reviewed by the book-keeper or by the publisher who made the contract.

Q. Do you mean your publisher?

A. Yes.

Q. Who would give directions to draw a check for paper?

A. If there were any directions necessary—I presume the check would be drawn without question as the reports came in, as the bills came in, in the regular routine of the business.

Q. Who examines to know whether it be regular or not?

A. I presume the publisher does.

Q. Who is your publisher?

A. Mr. Laffan, the business manager.

Q. And checks incurred on account of getting news, when those were wanted, who instructs to draw them?

A. Mr. Lord.

Q. How do you draw the line between the business manager and expenses attending getting news?

A. The managing editor manages the news business, and the material used in the production of the paper—such as paper, ink and type—would be a matter for the publisher.

Q. Who determines the amount of money that shall be devoted to one department or another?

316 A. The managing editor; he, within reason, is supposed to incur bills for news. If those bills were extraordinary it might be that he would be challenged for it. If anything was brought to the attention of the trustees, for example, that was extraordinary, there would be a review.

Q. What in my mind is a little indistinct is the line by which you would divide the business manager from the news manager who would necessarily incur, or might incur under the arrangement you speak of, pretty heavy expenses for news. At the same time it is so closely related to the general business management of the Sun that one might seriously clash with the other, possibly?

A. The bills for news theoretically, of course, are subject to the eye of the business manager.

Q. That would be Mr. Laffan?

A. Mr. Laffan, yes.

Q. He might interfere if he wanted to?

A. He might come and speak to me about it if there was anything extraordinary.

Q. The reporting system is under the direction of the news manager, Mr. Lord?

A. Of the news manager, Mr. Lord—the obtainment of news.

Q. And the salaries?

A. They have their salaries.

Q. And the number of persons to be employed and how distributed, all that belongs to Mr. Lord?

A. Within reason, at his discretion.

Q. Suppose a bill for insurance on this *Kanapaha*, for example, had in some way been addressed to you personally and you had opened the letter and found there was a bill for insuring the *Kanapaha*. What would you have naturally done with that?

A. I think I naturally would have investigated it and found out something about it.

Q. What course would that bill have taken in the office?

A. I think that Mr. Lord would have submitted his record of expenditures and amounts due to the book-keeper.

Q. I said suppose that had come to you personally as the chief of the Sun?

A. It did not come to me.

317 Q. I said suppose such a letter had come—take that case—what would have been the course of that bill; what direction would you have given it?

A. After I found it out?

Q. Yes.

A. If there was anything extraordinary turned up I might go and investigate and ask Mr. Lord about it.

Q. You would have gone to Mr. Lord for the explanation?

A. I presume I would have gone to Mr. Lord for the explanation, yes.

By Mr. BARTLETT:

Q. Was Mr. Lord authorized by you at any time to make written contracts which might subject the Sun to the payment of $75,000?

Mr. HUGHES: We object to that as leading, as calling for a conclusion, and as incompetent.

The COURT: I take it that means a direct authorization in some way, that that is what the question means.

Mr. BARTLETT: Yes, sir.

The COURT: I allow it.

Mr. HUGHES: We object to that on the ground that is leading, as calling for a conclusion of the witness as to what constitutes direct authority instead of calling for what was said and done, if anything, between him and Mr. Lord, and that it is incompetent.

Objection overruled.

Libellant excepts.

A. No.

Q. You didn't know if Mr. Lord hired any boats for the use of the Sun, that Mr. Lord was going to insure the boats so that the Sun would be liable for the loss of the boats, did you?

Mr. HUGHES: We object to that question as leading, and as improper in form.

The COURT: I have allowed all questions to be asked as to Mr. Dana's knowledge of any particular thing. I think he has
318 already said he did not know about this charter; never saw it and was not acquainted with the terms of it.

By the COURT:

Q. Were you acquainted with any of the terms of the charter upon which the *Kanapaha* was obtained for service of the Sun?

Mr. HUGHES: We except on the ground that the question is incompetent and irrelevant; and on the grouud that the witness' knowledge is not pertinent to the issue.

A. No knowledge.

By Mr. BARTLETT:

Q. Is Mr. Chester S. Lord a stockholder or trustee of the Sun Printing and Publishing Association, or was he such stockholder or trustee at any time during the year 1898?

Mr. HUGHES: We object to the question as incompetent, irrelevant and immaterial; that the question here should be as to this agency.

Objection overruled.

Libellant excepts.

A. No.

Recross by counsel for libellant.

By Mr. HUGHES:

Q. You were asked, I think, how many years Mr. Lord had been managing editor, not simply connected with the Sun, but managing editor. Will you state again?

A. I think I said twenty years.

Q. In that capacity?

A. Some long time.

Q. With the same duties and powers that you have described during that whole period?

A. Yes.

By the COURT:

Q. About what is Mr. Lord's age?

A. He is about 48, or 49, or 50.

319 Redirect by counsel for respondent.

By Mr. BARTLETT:

Q. Did you ever know of Mr. Lord prior to this occasion having made, or of his making, any instruments in writing alleged to be in behalf of the Sun Printing and Publishing Association, or in the name of the Sun Printing and Publishing Association?

Mr. HUGHES: We object, on the ground that on the facts disclosed the witness' knowledge or want of knowledge as to that is not pertinent to the issue here.

Objection overruled. Libellant excepts.

A. No.

By the COURT:

Q. You have never known of Mr. Lord's executing any written instruments binding the Sun?

A. No written instruments.

Q. Are there never any written contracts with reporters or persons employed in the editor's department or the news department?

A. I think not.

By Mr. BARTLETT:

Q. Nearly all are oral?

A. Nearly all.

Q. And the salaries are fixed orally?

A. And the salaries are fixed orally.

Q. Either by you or by Mr. Lord?

A. Either by me or by Mr. Lord.

Q. And the large salaries are fixed by you?

Mr. HUGHES: We object to that, calling for a conclusion, as leading, and as improper in form.

The COURT: I sustain the objection as leading.

Q. Are the large salaries fixed by you or not?

Mr. HUGHES: We object to the question as improper in form, that what is meant by "large salaries" should be mentioned.

Objection overruled. Libellant excepts.

320 A. Yes.

Q. Are you either individually or as trustee the largest stockholder in the Sun?

Mr. HUGHES: We object to that as incompetent, immaterial and irrelevant.

The COURT: I exclude the question.

By the COURT:

Q. You are a stockholder, of course?

A. Yes, sir.

Q. All the trustees are stockholders, aren't they?

A. Must be.

Recross by counsel for libellant.

By Mr. HUGHES:

Q. Is Chester S. Lord still employed by the Sun as managing editor?

A. Yes.

Q. He is now in the city of New York?

A. I believe so.

Q. And has been there continuously for the last two or three weeks?

A. Yes.

Q. Do you mean to be understood as saying, Mr. Dana, that you have personal knowledge as to what written contracts Mr. Lord may or may not have made in the course of the management of his department?

A. Would such a contract come before me?

Q. No, that is not what I am asking. I ask you if you mean to be understood as saying that you have personal knowledge as to what contracts in writing Mr. Lord may or may not have made in the course of his employment during the last few years.

A. I have the impression that I have.

Q. Do you confer with him in regard to that?

A. In regard to making contracts? I have never known him to make a contract.

Q. Do you mean that you have never talked together about the subject?

A. It has not been the habit of the office that he should make a contract except such as I have testified to.

Q. How do you know if you don't inquire?

A. It is the understanding.

321 Mr. BARTLETT: We have proved that Mr. Mitchell was not a director at this time, and I suppose that is sufficient.

LEONARD O. MACDANIEL, recalled for the respondent, testifies:

By Mr. BARTLETT:

Q. Tell us how you came to pay the premiums on the insurance on the yacht *Kanapaha*, if you paid them.

Mr. HUGHES: We object, on the ground that this witness has already been fully examined on the subject.

The COURT: I will allow the answer.

Libellant excepts.

Q. Who sent the bills to you?

A. I received the authorized bill from Mr. Lord, authorized in his handwriting.

Q. You didn't know anything about the circumstances when you paid it?

A. No.

Q. You didn't know anything about any liability for insurance?

A. No.

Q. Were you instructed by any officer or trustee of the Sun Printing and Publishing Association to pay these premiums on that insurance?

A. No, sir.

Q. You mean you had no special instructions about paying?

A. Yes, sir.

By Mr. HUGHES:

Q. You had none not to pay?

A. My general instructions are to honor Mr. Lord's orders in writing.

By Mr. BARTLETT:

Q. You just paid them because the bills were sent up?

A. Yes, sir.

Q. And you would have paid any bills O K'd by Mr. Lord?

A. Yes, sir.

322 Q. You would not have inquired into them?

A. No, sir.

By the COURT:

Q. Did you have any conversation with Mr. Lord about these particular bills for insurance?

A. No, sir. I should amend that; the first bill was authorized by him in writing; the two second bills were authorized by him verbally, and I put his name on them per myself.

Q. Did those bills state the length of time the insurance was to run?

A. They are in evidence. I think they do.

Q. Did they state when the insurance expired?

Mr. HUGHES: The first one states two months from April 2d, 1898. The second one states that it is from June 2d, 1898, to August 2d,

1898. The third one states that it is from August 2d, 1898, for one month.

The COURT: For what vessel?

Mr. HUGHES: The yacht *Kanapaha.* And the bill is to "the Sun Printing and Publishing Association to Chubb & Son, Dr.," and we have a letter from Mr. Macdaniel to Chubb in regard to it under date of July 12th.

By Mr. BARTLETT:

Q. At whose request did you write the letter just referred to?

A. Upon Mr. Lord's request, after conversation with him.

Q. Did any one else speak to you about writing this letter other than Mr. Lord?

A. No, sir.

Q. You were not instructed by any officer or trustee of the respondent to write this letter?

A. I have no recollection. I do not recollect his speaking of it.

Q. Mr. Lord?

A. Yes, sir.

By the COURT:

Q. When you sent it I presume the pencil marks in the
323 left-hand corner below were not on it?

A. No, sir.

Q. Was this received back by you in some way?

A. —, sir; an answer, Chubb's own letter.

Q. In whose handwriting are these pencil marks?

A. That I do not know.

Q. Was not this letter returned to you?

A. No, sir.

Q. Do you know how this letter came to be produced on this trial?

A. I saw it come up when Mr. Chubb was on the stand.

Q. You don't know whose handwriting this is in pencil?

A. No, sir.

Q. Do you know Mr. Chubb's handwriting?

A. He wrote in typewriter.

Q. Have you the answer?

A. I had the answer, but I destroyed it as it seemed of no further use at the time.

Q. Will you read that pencil memorandum in the corner and state what your recollection is as to the nature of the reply that you received to this letter?

Mr. BARTLETT: I except to the words "as to the nature."

Q. Do you remember the words of the letter?

A. I do, in effect.

Q. What was it?

A. They were to the effect the same as what is written here.

By Mr. HUGHES:

Q. In blue pencil?

A. In blue pencil.

By the COURT:

Q. Then you can read that pencil memorandum?

A. (Reading:) "Can't be cancelled to advantage as there is no return if you expect to use." "Return" there means "return premium."

By Mr. HUGHES:

Q. I understand that this letter that has been referred to—Libellant's Exhibit 14—omitting this blue-pencil memorandum upon it, is in your handwriting?

A. Yes, sir.

324 By Mr. BARTLETT:

Q. You had charge of the books of the Sun, did you?

A. I did.

Q. And the entries were made by you according to your judgment?

A. They were.

Q. And without being submitted to any of the officers or trustees of the Sun?

A. Yes, sir.

Q. The method of book-keeping and the grouping of items was entirely your own?

A. The grouping of items is my own. The method of book-keeping is the common, regular method of book-keeping; there is but one book-keeping method.

Q. You used your own judgment about the grouping of items?

A. Exactly.

Q. And certain expenditures in the business management of the paper were made by order of Mr. Laffan?

A. Yes, sir.

Q. And certain expenses connected with the news of the paper were made by order of Mr. Laffan, is that so?

A. That is so.

Q. Connected with the Laffan bureau for acquiring news, isn't it?

A. I don't know.

Q. News is acquired and sold through the Laffan bureau?

A. News is sold through the Laffan bureau; I don't know as to its acquisition.

Q. Certain payments are made by order of Mr. Laffan?

A. They are.

Q. Isn't it the fact that Mr. Lord sends downstairs to you a list of persons to whom payments are to be made on account of editorial salaries or for sending news to the paper?

A. Yes, sir.

Q. And those payments in the city of New York are made in little envelopes in cash?

A. Yes, sir; in the city of New York.

Q. And that larger sums or sums to be sent out of town are made by check?

A. Yes; out of town.

Q. And you assumed the item that was sent down by Mr. Lord to be correct without any inquiry?

A. Yes, sir.

325 Q. And without submitting any of the items to any of the trustees or officers?

A. Yes, sir.

By Mr. HUGHES:

Q. And the course of business you have just testified to has been such for many years, has it not?

A. I inherited it.

Q. And when did you come into your inheritance?

A. About ten years ago.

Q. And it has been so since?

A. With some modifications.

Q. Substantially as you have stated?

A. Substantially as I have stated; yes, sir.

FRANKLIN BARTLETT, being duly sworn and examined as a witness for the respondent, testifies:

The WITNESS: I am one of the trustees for The Sun Printing and Publishing Association, the respondent corporation, and was such trustee for the year 1898. I never knew anything about these alleged charter-parties or alleged agreements of suretyship and never heard anything about them until after the wreck of the vessel. The papers were never submitted to me, although contracts in writing on behalf of the corporation have often been submitted to me for years past.

Mr. HUGHES: If your honor please, this testimony is all taken under the same objection as previously offered, that any knowledge or lack of knowledge on the part of the witness as to these matters is not pertinent to the issue here, and we except to its admission.

Cross-examined by counsel for libellant.

By Mr. HUGHES:

Q. Were you a reader of the Sun during the spring and summer of 1898?

326 A. I have been a reader of the Sun for many years. I knew nothing whatsoever about the chartering or alleged chartering of the yacht *Kanapaha*.

By the COURT:

Q. Did you know nothing about the hiring or using of the *Kanapaha*?

A. No, sir.

Q. Or either of the other boats?

A. No, sir; knew nothing about it.

By Mr. HUGHES:

Q. Did you read the Sun in the spring and summer of 1898?

A. I cannot say that I read every word in every copy, but I read the Sun habitually.

Q. Do you take the Sun and read it?

A. I take it whenever I can get it.

Q. Did you know the Sun had reporters in Cuban waters?

A. Not of my own knowledge.

Q. Did you ever take the trouble to inquire?

A. No; I didn't do anything about it. I am counsel for the Sun; I take no active part in its business management except to give my opinion on instruments in writing to be executed by the corporation, which are submitted to me, to attend to its law business and to attend the meetings of the board of trustees and vote on such questions as come up for submission. I was formerly one of the examining board of the accounts and the system was simply for the board to report at a meeting——

Counsel for libellant objects to the testimony.

—and nothing was said either affirmatively or negatively; and so as to the report of the auditor since, it is merely stated. Formerly when Mr. Hitchcock and I were the examining board, Mr. Hitchcock would say, "The examining committee reports that they have examined the books up to — day and have found them to be correct," and then no one said anything and we passed on to the transaction of other business.

By the COURT:

327 Q. That was understood to be acquiescence unless objection was made, was it not?

A. I should think it would be expected to be non-action.

Q. Silence gives consent.

A. That is a question. I don't suppose it was to be an authorization of every item contained in the books.

Q. Did you ever know any item to be investigated?

A. No, sir; never.

Q. Did you ever know any item to be disapproved?

A. No, sir; never knew any discussion as to the items anyway.

By Mr. HUGHES:

Q. Did you inquire of any one what dispatch boats the Sun had during the Spanish war for the acquisition of news?

A. No, I knew nothing about it.

Q. And you didn't inquire?

A. Certainly not.

Q. Did you ever ask upon what terms the Sun was getting news of the events connected with the Spanish war?

A. No.

Q. Did you ever have any conversation with any of the trustees or with the managing editor with regard to the terms upon which the Sun obtained facilities to ascertain the progress of events during the Spanish war?

A. I have had some conversation since this controversy.

Q. I mean before this controversy arose.

A. No.

Mr. BARTLETT: It is admitted that Mr. Mitchell was not a trustee at this time, is it not?

Mr. HUGHES: It has been proved that he was elected a trustee on May 23d, so that he was a trustee during a large part of this period, but he was not a trustee, as I understand it, before that date. Did he have anything to do with the business, Mr. Bartlett?

MR. BARTLETT: No. He was just upstairs in the editorial room.

Testimony closed.

The oral argument for the respondent is resumed by Mr. Bartlett.

328 LIBELLANT'S EXHIBIT 1.

(Cancelled revenue stamp, 5 cents.)

We the undersigned desiring to form a company for the purpose hereinafter mentioned, under the authority and in pursuance of the act of the legislature of the State of New York entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17th, 1848, and the act or acts amendatory thereof or in addition thereto, and to accomplish the formation of such company do make, sign and acknowledge this certificate; and we do hereby state,

First. That the corporate name of said company is, "The Evening Telegraph Association."

Second. That the objects for which said company is formed are the printing and publishing of a daily newspaper in the city of New York, and generally the business of printing and publishing books, pamphlets and newspapers.

Third. That the capital stock of said company is two hundred thousand dollars, consisting of two hundred shares of one thousand dollars each.

Fourth. That the term of the existence of said company is to be fifty years.

Fifth. That the number of trustees of said company is eight, and the names of the truestees who shall manage the concerns of said company for the first year are Charles A. Dana, Francis A. Palmer, Timothy G. Churchill, Marshall B. Blake, Frederick A. Conkling, Peter McMartin, William T. Blodgett, John H. Sherwood.

Sixth. That the operations of said company are to be carried on in the city and county and State of New York.

329 In witness whereof we have hereunto set or hands and seals the twenty-seventh day of September in the year one thousand eight hundred and sixty-seven.

CHARLES A. DANA. [SEAL.]
F. A. PALMER. [SEAL.]
TIM. G. CHURCHILL. [SEAL.]
MARSHALL B. BLAKE. [SEAL.]
F. A. CONKLING. [SEAL.]
P. McMARTIN. [SEAL.]
WILLIAM T. BLODGETT. [SEAL.]
JOHN H. SHERWOOD. [SEAL.]

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On the twenty-seventh day of September, one thousand eight hundred and sixty-seven, before me personally came Charles A. Dana, Francis A. Palmer, Timothy G. Churchill, Marshall B. Blake, Frederick A. Conkling, William T. Blodgett, and John H. Sherwood, and on the twenty-eighth day of September, one thousand eight hundred and sixty-seven, before me personally came Peter McMartin, all known to me to be the individuals described in and who executed the foregoing certificate, and acknowledged to me that they executed the same.

B. F. LEE, JR.,
Notary Public.

(Cancelled revenue stamp, 5 cents.)

(Endorsed:) Certificate of incorporation of the Evening Telegraph Association. Filed Sept. 30, 1867. Erastus Clark, deputy sec'y of state.

330 STATE OF NEW YORK,
Office of the Secretary of State, } *ss:*

I have compared the preceding with the original certificate of incorporation of the Evening Telegraph Association, filed and recorded in this office on the 30th day of September, 1867, and do hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, this 7th day of November, one thousand eight hundred and ninety-eight.

[SEAL.]

—— DAVIDSON,
Deputy Secretary of State.

331 LIBELLANT'S EXHIBIT 2.

CHAP. 4.

An act to change the name of "The Evening Telegraph Association."

Passed January 24, 1868.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The name of the Evening Telegraph Association, a corporation duly created and organized under the authority and in pursuance of the act of the legislature of the State of New York, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, one thousand eight hundred and forty-eight, and the act or acts amendatory thereof or in addition thereto, and located in the city of New York, is hereby changed to, and said corporation shall hereafter be known as the "Sun Printing and Publish-

ing Association;" but all contracts and liabilities made or incurred by the said "Evening Telegraph Association" shall be and remain in force against the said corporation by the name hereby given to it.

§ 2. This act shall take effect immediately.

STATE OF NEW YORK, } ss:
Office of the Secretary of State, }

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom, and the whole of said original law.

Given under my hand and the seal of office of the secretary of state, at the city of Albany, this 2d day of November, in the year one thousand eight hundred and ninety eight.

—— DAVIDSON,
Deputy Secretary of State.

[SEAL.]

332 LIBELLANT'S EXHIBIT 3.

Memorandum of agreement made and entered into this first day of April, 1898, by and between William L. Moore of the city of New York, by Thomas Manning his agent, party of the first part, hereinafter called the owner, and Chester S. Lord of the city of New York, party of the second part, hereinafter called the hirer, witnesseth:

That the said William L. Moore being the owner of the steam yacht *Kanapaha* enrolled in the Atlantic Yacht Club, agrees to let and hereby does let, and the hirer agrees to hire and hereby does hire, the said yacht as she is now for the term of two months from this date expiring on the first of June now next ensuing for the sum of five thousand dollars ($5,000.00), payable on the signing of this agreement.

That the owner hereby agrees to deliver the said yacht in Manning's basin in South Brooklyn to the hirer or his representative as it now is and with all its gear, tackle, and furnishings as they now are.

That the hirer will overhaul and repair and put said yacht in commission at his own expense and from now on until the expiration of this contract will pay all its running expenses including, amongst other things, uniforms, wages, provisions, pilotage, tonnage, light-house and port dues and any and all other dues and charges and will surrender said yacht with all its gear, furniture, and tackle at the expiration of this contract to the owner or his agent at Manning's basin, foot 26th street, South Brooklyn, New York, in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted and free and clear of any and all indebtedness, liens or charges of any kind or of any description.

That the hirer will use the said steam yacht as a yacht only and will under no circumstances use her to carry freight, merchandise or passengers for hire nor do anything in contravention of its status

as a yacht, nor in the sailing or navigating of the same, do
333 anything in contravention of the laws of the United States or of any foreign country.

That for the purpose of this charter the value of the yacht shall be considered and taken at the sum of seventy-five thousand dollars ($75,000.00) and the said hirer shall procure security or guarantee to and for the owner in the sum of seventy-five thousand dollars ($75,000.00) to secure any and all losses and damages which may occur to said boat or its belongings which may be sustained by the owner by reason of such loss or damage and by reason of the breach of any of the terms or conditions of this contract.

That in the event of the failure of the hirer to return and surrender the said yacht to the owner as hereinbefore provided, the hirer shall be charged demurrage and shall pay demurrage to the owner at the rate of five hundred dollars ($500.00) per day for each and every day's detention.

The hirer shall be liable and responsible for any and all loss and damage to hull, equipment, tackle, spars, furniture or the like.

That the hirer during the continuance of this agreement shall at all times and at his own cost and expense keep the said yacht, its hull, tackle, spars, furniture, gear, boats and the like, in repair.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THOMAS MANNING,
Agent for William L. Moore, Owner.
CHESTER S. LORD,
For the Sun Printing & Publishing Company.

334 LIBELLANT'S EXHIBIT 4.

Memorandum of agreement made and entered into this 14th day of May, 1898, by and between William L. Moore of the city of New York, by Thomas Manning his agent, party of the first part, hereinafter called the owner, and Chester S. Lord of the city of New York, party of the second part, hereinafter called the hirer, witnesseth:

That the said William L. Moore being the owner of the steam yacht *Kanapaha* enrolled in the Atlantic Yacht Club, agrees to let and hereby does let, and the hirer agrees to hire and hereby does hire, the said yacht as she is now for the term of four months from the first day of June expiring on the first day of October now next ensuing for the sum of ten thousand dollars ($10,000.00) payable on the signing of this agreement.

That the hirer will carry out the provisions of the charter-party made on the first day of April last and will until the expiration of this contract keep said yacht in repair and will pay all its running expenses including amongst other things, uniforms, wages, provisions, pilotage, tonnage, light-house and port dues and any and all other dues and charges and will surrender said yacht with all its gear, furniture and tackle at the expiration of this contract, to the owner or his agent, at Manning's basin, foot 26th street, South Brooklyn, New York, in as good condition as at the start, fair wear

and tear from reasonable and proper use only excepted and free and clear of any and all indebtedness, liens or charges of any kind or of any description.

That the hirer will use the said steam yacht as a yacht only and will under no circumstances use her to carry freight, merchandise or passengers for hire, nor do anything in contravention of its status as a yacht, nor in the sailing or navigating of the same do anything in contravention of the laws of the United States or of any foreign country.

That for the purpose of this charter the value of the yacht shall be considered and taken at the sum of seventy-five thousand
335 dollars ($75,000.00) and the said hirer shall procure security or guarantee to and for the owner in the sum of seventy-five thousand dollars ($75,000.00) to secure any and all losses and damages which may occur to said boat or its belongings which may be sustained by the owner by reason of such loss or damage and by reason of the breach of any of the terms or conditions of this contract.

That in the event of the failure of the hirer to return and surrender the said yacht to the owner as hereinbefore provided, the hirer shall be charged demurrage and shall pay demurrage to the owner at the rate of five hundred dollars ($500.00) per day for each and every day's detention.

The hirer shall be liable and responsible for any and all loss and damage to hull, machinery, equipment, tackle, spars, furniture, or the like.

That the hirer during the continuance of this agreement shall at all times and at his own cost and expense, keep the said yacht, its hull, machinery, tackle, spars, furniture, gear, boats, and the like, in repair.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THOMAS MANNING.
CHESTER S. LORD,
For the Sun Printing and Publishing Association.

LIBELLANT'S EXHIBIT 5.

Whereas by agreement or charter-party dated May 14th, 1898, William L. Moore, of the city of New York, hereinafter called the owner, did or is about to hire or charter unto Chester S. Lord, of the city of New York, hereinafter called the hirer, the steam yacht *Kanapaha*, enrolled in the Atlantic Yacht Club, as will more fully and at large appear by a copy of said agreement or
336 charter-party hereunto annexed and hereby made part hereof.

Now at the request of the said hirer and for valuable consideration received from him, and in consideration of one dollar ($1.00) from the said owner received, and receipt whereof is hereby acknowledged.

We, the Sun Printing and Publishing Company, of the city of

New York, for ourselves and each of us, our successor or successors, and for each of our executors or administrators, enter into the following understanding and agreement of suretyship:

First. That the said hirer will well and faithfully perform and fulfill everything in and by the said annexed agreement on his part to be kept and performed.

Second. That we expressly waive and dispense with notice of any demand, suit, or action at law against the hirer and expressly waive any and all notice of non-performance of the terms of said annexed agreement on the part of the hirer to be kept and performed. The intention of this understanding being to hold us primarily liable under the terms of the annexed agreement.

Third. That our liability hereunto shall in no case exceed the sum of seventy-five thousand dollars ($75,000.00).

In witness whereof we have hereunto set our hands this 14th day of May, 1898.

CHESTER S. LORD,
For Sun Printing and Publishing Association.

STATE OF NEW YORK, }
County of New York, } ss:

On this 14th day of May, 1898, before me personally appeared Chester S. Lord, to me known and known to me to be the managing editor of the Sun Printing & Publishing Company, and who duly acknowledged that he executed the above undertaking for and on behalf of his firm under authority of said company as its act and deed.

[SEAL.]

A. H. BRADLEY,
Notary Public, New York.

337 LIBELLANT'S EXHIBIT 8.

NEW YORK, *April* 23, 1898.

The Sun Printing & Publishing Association to Chubb & Son, Dr.

To cost of insurance on hull, mach'y, etc., of the steam yacht *Kanapaha* for two months from April 2, 1898, $58,560, @ 2½ % =	1,464.00
Stamp charges	14.64
	$1,478.64

CHUBB & SON.

Paid Jun- 1, 1898. New York.

Please receipt & return to L. O. Macdaniel, the Sun, New York.

LIBELLANT'S EXHIBIT 9.

NEW YORK, *June* 11, 1898.

The Sun Printing & Publishing Association to Chubb & Son, Dr.

To cost of insurance on yacht *Kanapaha* from June 2, '98, to Aug. 2, '98, $58,560, @ 2¾ % = ... 1,610.40
14.64

1,625.04

Paid.

CHUBB & SON.

Paid by m'g'r check # 39812 July 12, '98.

338 LIBELLANT'S EXHIBIT 10.

NEW YORK, *July* 30, 1898.

The Sun Printing & Publishing Association to Chubb & Son, Dr.

To cost of insurance on yacht *Kanapaha* from August 2, '98, for one month, $58,560, @ 1¼..... 732.00
Stamp charges.... .... 14.64

746.64

Paid.

CHUBB & SON.

Paid by m'g'r check # 40423 Aug. 16, '98.
Please receipt & return to L. O. Macdaniel, the Sun, New York.

339 LIBELLANT'S EXHIBIT 11.

From Morning Sun of Sunday, September 11th, 1898.

Yacht *Kanapaha* wrecked.

All hands saved—one of the Sun's despatch boats during the war.

Special cable despatch to the Sun.

SANTIAGO DE CUBA, *Sept.* 10.—Gen. Lawton received a despatch today from the north coast of the island saying that the steam yacht *Kanapaha*, Capt. Atchinson, was wrecked on the reefs above the Bay of Nipe, north coast of Santiago province, Sept. 8. The boat was a total loss. All hands were saved.

The *Kanapaha* was chartered by the Sun before the outbreak of the war as a despatch boat. She was formerly J. Pierpont Morgan's first *Corsair*. She was built in 1880 at Philadelphia. Her length was 173½ feet, her beam 23 feet and her depth 11½ feet. Her gross tonnage was 248. Her owner was W. L. Moore. The *Kanapaha*

sailed from Santiago with Gen. Miles when the army left for Porto Rico. When wrecked she was on her way from Ponce to Havana. She sailed from Ponce on Sept. 1, stopping on the way at Guanica and Mayaguez.

Capt. Atchinson is a thoroughly able skipper. He has had command of a number of private yachts of prominent Americans. The *Kanapaha* was the fastest and most seaworthy newspaper despatch boat in the West Indies during the war. The Sun's representative aboard her was Mr. W. J. Chamberlin.

340 LIBELLANT'S EXHIBIT 12.

Whereas, by agreement or charter-party dated April first, 1898, William L. Moore, of the city of New York, hereinafter called the owner, did or is about to hire or charter unto Chester S. Lord, of the city of New York, hereinafter called the hirer, the steam yacht *Kanapaha*, enrolled in the Atlantic Yacht Club as will more fully and at large appear by a copy of said agreement or charter-party hereunto annexed and hereby made part hereof.

Now, at the request of the said hirer and for valuable consideration received from him, and in consideration of one dollar from the said owner received, and receipt whereof is hereby acknowledged.

We, The Sun Printing and Publishing Company of the City of New York, for ourselves and each of us, our successor or successors, and for each of our executors or administrators, enter into the following understanding and agreement of suretyship:

First. That the said hirer will well and faithfully perform and fulfill everything in and by the said annexed agreement on his part to be kept and performed.

Second. That we expressly waive and dispense with notice of any demand, suit, or action at law against the hirer and expressly waive any and all notice of non-performance of the terms of said annexed agreement on the part of the hirer to be kept and performed.

The intention of this understanding being to hold us primarily liable under the terms of the annexed agreement.

Third. That our liability hereunto shall in no case exceed the sum of seventy-five thousand dollars ($75,000).

In witness whereof we have hereunto set our hands this first day of April, 1898.

CHESTER S. LORD,
For the Sun Printing and Publishing Company.

Witness:
THOMAS MANNING.

341 STATE AND COUNTY OF NEW YORK, *ss:*

On this second day of April, 1898, before me personally appeared Chester S. Lord, to me known and known to me to be the managing editor of the Sun Printing & Publishing Company, and who duly acknowledged that he executed the above undertaking for and on

behalf of his firm, under authority of said company as its act and deed.

JAMES P. J. MORRIS,
Notary Public, N. Y. Co.

[SEAL.]

LIBELLANT'S EXHIBIT 13.

By-laws of the Sun Printing and Publishing Association as Amended June 28, 1898.

ARTICLE I.

The annual election of trustees shall be held at the office of the association on the Monday preceding the fourth Tuesday in May, from noon till 12.30 o'clock p. m.

At the first meeting of the trustees after their election there shall be chosen by ballot a president and a secretary.

Vacancies among the trustees may be filled by the remaining trustees at any meeting after they occur, and the persons so chosen shall retain their places until the next annual election for trustees.

ARTICLE II.

342 The trustees shall hold a regular meeting at the office of the association on the fourth Tuesday of each month, at 1 o'clock p. m. Special meetings shall be called by the secretary whenever requested by two or more trustees.

ARTICLE III.

The trustees may call meetings of the stockholders at any time; and it shall be their duty to call such meetings whenever they are requested to do so, in writing, by the president, or by stockholders holding a majority of the stock. Each stockholder shall be notified in writing of all such meetings, at least seven days before the time of holding the same.

ARTICLE IV.

Three trustees shall constitute a quorum, and the representatives of one hundred and seventy-six shares of stock shall constitute a quorum of the stockholders for the transaction of business at any meeting.

ARTICLE V.

The president and secretary shall sign all certificates of stock, and make all transfers of the same on the books of the association.

ARTICLE VI.

The trustees shall not sell or alienate the title and good will of the Sun, nor sell the real estate belonging to the association, without first calling a meeting of the stockholders and obtaining the consent of the holders of two-thirds of the whole stock.

ARTICLE VII.

These by-laws may be amended by the affirmative vote of three trustees, at any meeting, after a week's notice of such proposed amendment.

343 LIBELLANT'S EXHIBIT 14.

NEW YORK, *Jul-* 12, 1898.

Mess. Chubb & Son, New York.

GENTLEMEN: Referring to the enclosed bill, are marine rates for such a risk as this sufficiently reduced to make it worth canceling this insurance and writing for say a month? Or will the rate probably be still lower by Aug. 2d.

Very truly yours, L. O. MACDANIEL, *Cash'r.*

Can't be cancelled to advantage as there is no return if you expect to use.

344 LIBELLANT'S EXHIBIT No. 21—April 24, 1899.

[SEAL.]

Issued May 4, 1898.

HYDROGRAPHIC OFFICE.

Sailing directions are corrected to date of issue. Two copies of H. O. notices to mariners and one copy of a supplement will be furnished. Supplements cancel all previous notices to mariners. Navigators will correct light lists and sailing directions from notices to mariners and supplements.

List of Notices to Mariners and Supplements Affecting this Volume Since Issue.

Title. Date of receipt.	Date of publication.	Corrections. Date of entry.

345 EXHIBIT 21—pp. 122, 123.

Port Nuevitas del Principe.—From Nuevas Grandes the coast takes a N. W. direction for 13 miles to Nuevitas del Principe, is skirted by a reef all the way, and should not be approached within 2½ miles.

Nuevitas is the port of Puerto Principe, about 45 miles distant, the two places being connected by a railway. The land is low on both sides of entrance; the town is surrounded by hills from east to S. W.; back of the town the land is low. The entrance of the harbor may be recognized by the Maternillos light-house, by three small hills on the south side of the harbor, and by three islets in the harbor called Los Ballenatos, a little higher than the surrounding land. Also on the east side of the entrance is a quadrangular building painted yellow, surmounted by a white mast, from which is shown a light.

Light.—On Barlovento or Pilot point, the east side of the entrance is a quadrangular building painted yellow, and a white mast stands in the middle of it, from which is exhibited, 48 feet above the sea, a white light visible 9 miles.

Maternillos point is 4½ miles from the entrance to Port Nuevitas. The coast between is low, but free of danger. The point is surrounded by a coral reef called the Corona de Maternillos. From Maternillos point as far westward as Icasos point, a space of nearly 250 miles, the coast is bordered with low mangrove cays and reefs to the distance in some places of 20 miles from the mainland. The greater part to the westward of Paredon point is but imperfectly represented on the charts, and, being studded with dangers, steep-to, should be most cautiously approached.

Light.—The light-house on Maternillos point is 170 feet high, white, with the word Colon painted on it, and exhibits, 174 feet above the sea, a fixed and flashing white light every 48 seconds, duration of flash 5 seconds. The light should be visible 17 miles.

346 RESPONDENT'S EXHIBIT A—April 17, 1899.

By-laws of the Sun Printing and Publishing Association, Amended June 27, 1893.

ARTICLE I.

The annual election of trustees shall be held at the office of the association on the Monday preceding the fourth Tuesday in May, from noon till 12.30 o'clock p. m.

At the first meeting of the trustees after their election there shall be chosen by ballot a president, who shall be *ex officio* a member of such of the standing committees; a secretary, and also by ballot (unless otherwise ordered by the trustees) two standing committees, viz., an executive committee and an examining committee, each consisting of three members.

Vacancies among the trustees may be filled by the remaining trustees at any meeting after they occur, and the persons so chosen shall retain their places until the next annual election for trustees.

ARTICLE II.

The trustees shall hold a regular meeting at the office of the association on the fourth Tuesday of each month at 1 o'clock p. m. Special meetings shall be called by the secretary whenever requested by two or more trustees.

ARTICLE III.

The trustees may call meetings of the stockholders at any time; and it shall be their duty to call such meetings whenever they are requested to do so, in writing, by the president, or by stock-
347 holders holding a majority of the stock. Each stockholder shall be notified in writing of all such meetings, at least seven days before the time of holding the same.

ARTICLE IV.

Three trustees shall constitute a quorum, and the representatives of one hundred and seventy-six shares of stock shall constitute a quorum of the stockholders for the transaction of business at any meeting.

ARTICLE V.

The president and secretary shall sign all certificates of stock, and make all transfers of the same on the books of the association.

ARTICLE VI.

The trustees shall not sell or alienate the title and good will of the Sun, nor sell the real estate belonging to the association, without first calling a meeting of the stockholders and obtaining the consent of the holders of two-thirds of the whole stock.

ARTICLE VII.

The executive committee shall have the supervision of all the property of the association contained in their building, and of the building itself. It shall be their duty to rent such portion of the same as is not required for the use of the association, and to see that all necessary alterations and repairs are faithfully and economically executed; but no expenditure shall be made by the committee exceeding the sum of five hundred dollars unless by authority of the trustees. They shall report their doings to the trustees at each regular meeting.

It shall be the duty of the examining committee to examine the accounts of the association, and to inquire into both the receipts and disbursements of money. They shall report to the trustees at each regular meeting.

348 ARTICLE VIII.

These by-laws may be amended by the affirmative vote of three trustees, at any meeting, after a week's notice of such proposed amendment.

RESPONDENT'S EXHIBIT B—April 24, 1899.

170 NASSAU STREET, NEW YORK, *April* 26, 1898.

The regular meeting of the board of trustees was held this day at 1 p. m.

Present: Paul Dana, Thos. Hitchcock and Franklin Bartlett.

Minutes of meeting held March 22nd, 1898, were read and approved.

The examining committee, reported the books correct to the 23rd inst., and recommended a dividend of 5% on the capital stock, payable June 1st, 1898, which on motion was so declared.

Mr. Hitchcock was appointed to investigate and report on the subject of the investment of surplus earnings.

Application was received from the Third Avenue R. R. Co. for permission to change their motive power; and on motion of Mr. Hitchcock it was

Resolved, That said application be hereby granted, and the president be authorized to sign same and affix the corporate seal of this association to said instrument.

On motion the meeting adjourned.

Attest: L. O. MACDANIEL,
Rec'd'g Sec'y.

349 United States District Court, Southern Dist . of New York.

WILLIAM L. MOORE
against
THE SUN PRINTING AND PUBLISHING ASSOCIATION. } In Admiralty.

Zabriskie, Burrill & Murray for libellant.
Franklin Bartlett for respondent.

BROWN, *J.*:

The above libel was filed to recover for the loss of the yacht *Kanapaha* by stranding on September 5th, 1898, when she ran upon a reef on the north coast of Cuba, about 2½ miles from the shore and about seven miles east of Nuevitas while proceeding westward in the service of the defendant. The yacht had been chartered through the negotiations of Chester S. Lord, manager of the news department of the Sun newspaper, first for a period of two months for $5,000, by charter dated April 1st, 1898, and afterward by charter dated May 14th, 1898, for $10,000 more for four months from June 1st to October 1st, 1898 The yacht was used by the Sun as a despatch-boat for obtaining news pertaining to the Spanish war in cruising in Cuban waters. In both charters Mr. Lord was desig-

nated as the "hirer" of the yacht; but each charter was signed "Chester S. Lord, for the Sun Printing and Publishing Company." The charter provided that the hire should be paid on signing the agreement, and that the hirer should man and equip the yacht, pay all expenses and surrender her in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted, and free from all liens and charges, and be liable and respon-
350 sible for any and all loss and damage to hull, equipment, &c. In each charter there was also the further provision:

"That, for the purpose of this charter, the value of the yacht shall be considered and taken at the sum of $75,000, and the said hirer shall procure security or guarantee to and for the owner, in the sum of $75,000, to secure any and all losses and damages which may occur to said boat or its belongings which may be sustained by the owner by reason of such loss or damage, and by reason of the breach of any of the terms or conditions of this contract."

At the time of the execution of the second charter the yacht was at sea, in the service of the respondent, under the former agreement; and when the second charter was executed and delivered the agreement of suretyship which it called for was at the same time delivered to the libellant. This latter agreement purports to be between the Sun Printing and Publishing Company and the libellant. It refers to the charter dated May 14th, 1898, as annexed and made part thereof, and declares that, at the request of the hirer, the defendant "enters into the following understanding and agreement of *suretyship:* First, that the hirer will well and faithfully perform everything in the annexed agreement upon his part to be performed; second, that the respondent expressly waives and dispenses with notice of any demand, suit or notice of non-performance, &c., the intention of this understanding being *to hold us primarily liable* under the terms of the annexed agreement;" third, "that our liability hereunto *shall in no case exceed the sum of $75,000.*" This instrument, instead of being executed by some other person than Mr. Lord, was signed like the charter itself, "Chester S. Lord for the Sun Printing and Publishing Association," without more; and it was acknowledged by him before a notary public, as done "under authority of said company and as its act and deed."

The answer denies that Mr. Lord had any authority to execute either the charter-parties or the agreement of suretyship on
351 account of the defendant, or that the defendant was bound thereby; it admits that the yacht was used as a despatch-boat by the defendant corporation in cruising and obtaining news, until she was stranded; and alleges that in executing the above papers Mr. Lord acted on his own responsibility and without the authority of the defendant's board of trustees or of any of its members; that the defendant has fully paid for the use made of the yacht by the defendant, and that the yacht was lost by sea perils, without any fault or negligence on the part of defendant or its employees.

Up to within a few days of the loss of the yacht she had been kept insured for the sum of $60,000 under various policies taken out

by Chubb & Son, as agents, for which on three different occasions bills had been rendered to the defendant and the premiums paid by the defendant's checks. These insurances, however, which had been previously three times renewed all expired on September 1st, four days before the yacht was stranded, and were not again renewed. The libellant claims that the defendant is responsible as principal under the charter as well as under the guarantee; and that the loss being total, the liability is fixed at $75,000 as in a valued policy; and that the defendant is, therefore, liable under the agreement for that amount.

I. The first question litigated is whether the charter is to be held in the contract of the Sun or as only the agreement of Mr. Lord, through lack of authority on his part to bind the defendant. The two papers are inartificially drawn and executed. The intention of the owner apparently was to let the ship nominally and in form to Mr. Lord, who is called the "*hirer;*" and at the same time to take a guarantee from The Sun, the defendant, by which it should make itself virtually the principal; but Mr. Lord evidently did not understand that he was hiring the yacht individually, since he did not sign the charter in his own name simply or for himself, but only "for the Sun Printing and Publishing Company." And the guar-
352 antee annexed to the charter, which purported to bind the Sun as "primar-ly liable," *i. e.*, as virtual principal, was not signed by any officer of the Sun as an independent obligation would naturally have been signed, but by Mr. Lord only, "for the Sun Printing and Publishing Association." The two papers must be construed together, therefore, and as forming one contract; so that if Mr. Lord had authority to bind the Sun, it must be held from the form of the signatures to both papers that the defendant is bound thereby, since it is obvious that Mr. Lord intended to bind the Sun and not himself.

Though written charters of vessels were formerly made under seal and the forms still in use thus read, they have long since ceased to be usually executed under seal. Indicating only the letting and hiring of the vessel according to the terms agreed on, the charter is equally valid if by patrol only, and patrol charters are constantly enforced in this court. The authority to execute unsealed charters like the present, therefore, does not differ in its nature or circumstances from that required for making any other business contract, and in case of dispute the authority to execute it is to be gathered from all the legitimate evidence and circumstances bearing upon it.

In the present case none of the immediate parties to the negotiation or to the execution of the contract have been examined as witnesses; neither Mr. Lord on the part of the defendant, nor Mr. Manning, who was the agent of the libellant, and who executed the charters on the libellant's part. Many circumstances, however, are brought out in the evidence in regard to the conduct of the parties during the charter period, as well as before, from which no doubt is left in my mind that these contracts must be deemed legally to be the contracts of The Sun, the defendant; that Mr. Lord had such

general authority as was sufficient to enable him to enter into these contracts; that he intended to bind the defendant and not himself, and that the trustees and managing officers of the defendant had such general knowledge of his acts in hiring the yacht and
353 such perfect means of knowledge of all the particulars, had they desired to know them, as to make their acts in using the yacht under the charters, as they did, a ratification of Mr. Lord's action, and to bind them for the performance of his agreements made in their behalf. The following are some of the principal of these circumstances:

Mr. Lord had for twenty years been the manager of the news department of the Sun, and as such had been accustomed to make all necessary contracts in that department, and to engage, direct and send out reporters to procure news; for that purpose he had been previously accustomed to hire boats to accompany races, and during the war with Spain he also hired two other boats at different times for similar use as the *Kanapaha*. His bills incurred in this business were paid by the defendant either in cash or by checks to his order, entered in the books of the defendant, examined and reported monthly, and approved by the defendant. The same course was pursued as regards the charter hire and all the expenses of the *Kanapaha* during the five months previous to her loss. The charter money on both charters, viz., $5,000 and $10,000 respectively, was paid in advance in April and May by checks of the defendant; the premiums of insurance at three different times were also paid by the defendant's checks; and all these checks were reported and entered in defendant's books in the usual course. The yacht, and the other boats employed at the same time, were used exclusively for the benefit of the defendant in procuring news through reporters under the direction of Mr. Lord, and this yacht was navigated from place to place by the master and crew as directed by the Sun reporter in charge. All the expenses of the outfit, maintenance, wages and repairs of the vessel were born- and paid by the Sun. About $5,000 was received from other publishers for news obtained by this yacht and sold to them by Mr. Laffan, the general business and financial
354 manager of the defendant and one of its trustees. Mr. Dana, the president of the defendant, had general information of the arrangements made by Mr. Lord to procure news by means of these different vessels, although he made no inquiry as to details, as these were generally left to Mr. Lord's management. Mr. Laffan was not examined as a witness, and the other two trustees of the defendant gave no attention to any of the particulars of Mr. Lord's department.

From these circumstances it is evident that the hiring of the yacht was for the exclusive use of the Sun, and not for any personal use by Mr. Lord; that it was used for the Sun's benefit only, and in the customary line of Mr. Lord's employment in procuring news; and there being no suggestion of any concealment of any of the particulars from the trustees and full means of knowledge being available to them, the above circumstances together with the

payment of all expenditures by the defendant, leave no doubt of the ratification by the defendant of Mr. Lord's acts, equivalent to an original authority, even if any doubt could exist of Mr. Lord's original authority arising from the larger responsibilities attached to these later contracts.

II. The yacht having been totally lost, the defendant under the agreement in the charter "to be liable and responsible for any and all loss and damage" as well as by the agreement to surrender the yacht "in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted" as well as under the agreement of suretyship, so called, engaging that the hirer should "well and faithfully perform and fulfil everything in and by the said agreement on his part to be kept and performed,"—became liable to the libellant for his loss and damage through the failure to return the yacht on the first of October, when the charter expired. The libellant contends that he should be paid $75,000 for this loss and the failure to return the yacht; because the charter contains the statement that "for the purpose of this charter
the value of the yacht shall be considered and taken at the
355 sum of $75,000." It is noticeable, however, that neither in the immediate context nor anywhere in the charter or in the agreement of suretyship, is there any agreement that the sum of $75,000 should be paid for the failure to return the yacht at the end of the charter period. That clause in the charter, on the contrary, stands in immediate connection with, and seems to be the inducement to, the further clause by which the hirer agrees to "procure security or guarantee to the owner in the sum of $75,000 against any and all loss and damage which may occur to said boat or its belongings, which may be sustained by the owner by reason of such loss or damage and by reason of the breach of any of the terms or conditions of this contract." One very important part of the contract and its obligations was the payment of the charter hire of $10,000; and the security required to be given by the terms of the charter and by the agreement of suretyship, which was in fact given and delivered at the same time the charter was signed, includes, therefore, the payment of the charter hire as well as the performance of the many other obligations contained in the charter. The charter hire of $10,000, as the evidence shows, was paid by the Sun's check, which was dated on May 14th, the same date as the charter, but paid, according to the evidence, on May 16th. So much of its obligation of $75,000 has, therefore, been discharged by the Sun; and the express provision of the second instrument, called the agreement of suretyship, is that "in no case shall the liability of the Sun exceed the sum of $75,000." Even if the two agreements be regarded as virtually one, as it would seem they must be, still this latter clause must control the general expressions preceding; and this leaves, after the Sun's payment of $10,000 for the charter hire, but $65,000 principal as the limit of any further obligation on its part.

Looking at the different clauses of the agreement and the circumstances, I think the libellant is entitled to a judgment for the

above sum with interest from October 1st, and that this con-
356 struction alone can reasonably give effect to the apparent intention of the parties. Some effect must be given to the clause declaring that $75,000 shall be considered and taken as the value of the yacht. This means, I think, the value at the beginning of the charter period. Considering that the yacht was to be used continuously in cruising in belligerent waters, the special risk incident to such navigation, the actual depreciation of the yacht even though any accidental damages from such navigation were reasonably well repaired, as well as the ordinary depreciation from reasonable wear and use, which the charter recognizes and contemplates, and considering further that the charter period terminated at about the close of the ordinary yachting season, when opportunities for letting or rechartering would be much diminished—there can be no doubt that the value of the yacht at the close of the charter period must have become and must have been expected to become, very considerably less than at the beginning; while the large amount of the charter hire—$10,000—a considerable proportion of the whole value of the yacht at the date of the charter, shows that the intention was to compensate the owner fully for all such risk and depreciation. Taking, therefore, the value fixed, namely $75,000 as the agreed value of the yacht at the beginning of the charter on the one hand, and the express limitation that in no event should the liability of the defendant exceed $75,000 on the other hand, of which the $10,000 charter hire was a part, and has been paid by the defendant, the payment of the remaining $65,000 with interest from the termination of the charter period should be regarded as meeting the intention of the parties.

Any different construction, it seems to me would manifestly contradict the presumed intention. Suppose the vessel had been lost at the end of the first week of the charter period; is it possible to suppose either that the libellant expected to receive, or that the defendant expected to pay $75,000 besides the $10,000 already paid
and received, making $85,000 in all? To me it seems mani-
357 festly not. That would be $10,000 more than the entire value put upon the yacht; and it may certainly be assumed that the libellant in fixing the estimated value at the beginning of the charter made it sufficiently high to afford him perfect indemnity. And so if the yacht had been lost before the charter hire was paid—and it often happens that the payment of charter hire agreed to be paid at the execution of the charter, is more or less postponed—it seems clear that the Sun could not have been required to pay more than $75,000 in all; and the fact that the charter hire was paid by the Sun, and the yacht loss later, cannot increase the extent of the Sun's liability. The further fact that the yacht was insured by the defendant in the sum of $60,000, though not binding upon the libellant, because not an act to which he was privy, is at least to some extent indicative of the proximate liability for the yacht herself, as understood by the defendant, though not of course conclusive. Had the intention of the parties been that the sum of $75,000 should be paid to the libellant for failure to return the yacht at the close of

the charter period, it seems to me that some more direct language indicative of that purpose would have been used in the charter. The entire absence of any direct expression of that kind, and the absence of any provision requiring the defendant to insure the vessel or keep her insured in any specific sum, are opposed, as it seems to me, to the present contention of the libellant in this regard; while the specific provision that the entire liability of the defendant should not exceed $75,000, (including the payment of the charter hire, which the defendant has already paid) indicates the remaining sum of $65,000, with interest as the amount required to be paid upon the total loss of the yacht.

The valuation clause in marine policies of insurance is not analogous, I think, to this charter. In such policies that clause has reference to a single object, namely, the rights of the parties upon a loss by sea peril. In this charter its object was to determine also
358 the amount of security, which was designed to cover and does cover a multitude of particulars, as well as the important obligation to pay the charter hire.

Decree accordingly for $65,000, with interest as above and costs.

June 28th, 1899.

At a stated term of the district court of the United States of America for the southern district of New York, held at the post-office building, in the city of New York, on the 23rd day of August, 1899.

Present: Hon. Addison Brown, judge.

WILLIAM L. MOORE
against
SUN PRINTING AND PUBLISHING ASSOCIATION.

This cause having been heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation having been had in the premises; it is—

Ordered, adjudged and decreed, that the libellant recover from the respondent the sum of sixty-five thousand dollars ($65,000), with interest thereon from October 1st, 1898, amounting to three thousand four hundred and eighty-eight $\frac{35}{100}$ dollars ($3,488.34) together with the sum of one hundred and forty-one $\frac{3}{100}$ dollars ($141.03) for his costs and disbursements as adjusted, amounting in all
359 to the sum of sixty-eight thousand six hundred and twenty-nine $\frac{37}{100}$ dollars ($68,629.37).

And it is further ordered, that unless this decree be satisfied or an appeal be taken therefrom and security be given within the time provided by the rules and practice of this court then the said respondent and its sureties cause the engagements of their stipulations and bonds to be performed and satisfied or show cause before this court why judgment should not be entered against them for the amount aforesaid decreed and why execution should not issue thereon against their goods, chattels and lands.

ADDISON BROWN.

(Endorsed:) Final decree. Filed Aug. 24, 1899.

District Court of the United States for the Southern District of New York.

WILLIAM L. MOORE, Libellant and Appellee,
against
THE SUN PRINTING AND PUBLISHING ASSOCIATION, Respondent and Appellant.

SIRS: Please take notice that the respondent above named hereby appeals to the United States circuit court of appeals for the
360 second circuit from the final decree and judgment entered herein on the 23d day of August, 1899, and from each and every part thereof.

Dated New York, August 31st, 1899.

Yours, &c., FRANKLIN BARTLETT,
Proctor for Respondent and Appellant,
82 Times Building, Borough of Manhattan, New York City.

To Zabriskie, Burrill & Murray, Esqrs., proctors for libellant and appellee; Samuel H. Lyman, Esq., clerk of the district court of the United States for the southern district of New York.

(Endorsed:) District court of the United States, southern district of New York. William L. Moore, libellant and appellee, against The Sun Printing and Publishing Association, respondent and appellant. Notice of appeal. Franklin Bartlett, proctor for resp'd't & app'l't, 82 Times building, borough of Manhattan, New York city. Served Sept. 7, 1899.

361 United States Circuit Court of Appeals for the Second Circuit.

WILLIAM L. MOORE, Libellant and Appellee,
against
THE SUN PRINTING AND PUBLISHING ASSOCIATION, Respondent and Appellant.
Assignment of Errors.

Afterwards, to wit, on the — day of ——, before the justices of the United States circuit court of appeals in the second circuit, at the post-office building, in the borough of Manhattan, city of New York, comes The Sun Printing and Publishing Association by Franklin Bartlett, its proctor, and says that in the record and proceedings aforesaid there is manifest error, in which, to wit:

First. A. It appears by the record that the court erred in admitting in evidence the cheque for $5,000, dated New York, April 2nd, 1898, because such cheque was incompetent and improper, irrelevant and immaterial, as it was a payment made under an alleged charter-party which expired by its very terms on May 31st, 1898, prior to the execution of the second alleged charter-party, during the pendency of which the vessel was lost.

This cheque was objected to as incompetent, irrelevant and immaterial; and on the special ground that whatever took place under

the charter-party which had expired long prior to the loss of the vessel was irrelevant.

362 The court admitted the cheque and exception was duly taken by respondent.

Sten. Min., p. 11.

First. B. It appears by the record that the court erred in admitting in evidence the receipt for $1,476.64, insurance on the yacht *Kanapaha* paid by the Sun during the existence of the first alleged charter-party which expired on May 31st, 1895, and long prior to the loss of the yacht *Kanapaha*.

This receipt was objected to as incompetent, improper, irrelevant and immaterial, and on the specific ground that the insurance relates to the first charter-party, which had expired at the time of the loss of the vessel.

Objection was overruled, and exception was duly taken by the respondent.

Receipt was marked Libellant's Exhibit No. 8.

4 & 5 Sten. Min., p. 23.

Second. It appears by the record that the court erred in admitting in evidence the following statement from the Sun newspaper of May 3d, 1898:

"The Sun's yacht, the *Kanapaha*, met the *Nashville* 15 miles northeast of Havana; both were looking for the flagship."

This evidence was objected to as incompetent, improper, irrelevant and immaterial, but the evidence was admitted, and an exception was duly taken by the respondent.

4 & 5 Sten. Min., pp. 59, 60.

Third. It appears by the record that the court erred in admitting in evidence the statement of the wreck of the yacht *Kanapaha* published in the Sun of December 11, 1898. In this article it was stated "Yacht *Kanapaha* wrecked. All hands saved. One of the Sun's despatch-boats during the war."

363 The paper containing the article when offered in evidence was objected to as incompetent, improper, irrelevant and immaterial, and on the specific ground that respondent could not be bound by any statement made in the paper as to a charter.

Sten. Min., pp. 61, 62.

The court reserved its ruling on these papers.

The statement contained in the Sun was immaterial considered as an article, and it was incompetent evidence to prove the facts in the article stated.

Fourth. It appears by the record that the court erred in admitting in evidence the letter of the cashier of the Sun to a member of the firm of Chubb & Son, insurance agents.

The letter was objected to by respondent as irrelevant, immaterial and incompetent and improper, and on the special ground that the respondent could not be bound by letters of the cashier except within the scope of his power.

The court admitted the letter, and an exception was duly taken by the respondent.

The letter was marked Libellant's Exhibit No. 14.

Sten. Min., p. 117.

Fifth. It appears by the record that the court erred in admitting in evidence the statement of Albert Lee, the editor of "Harper's Round Table," as to a conversation with Mr. Chester S. Lord, managing editor of the Sun, had in March, 1898, prior to the execution of the first alleged charter-party.

The admission of this evidence was objected to as incompetent, immaterial, irrelevant and improper, and on the specific ground that it called for an interview prior to the making of the charter-party.

The objection was overruled, and an exception was duly taken by respondent.

Sten. Min., p. 167.

Sixth. It appears by the record that the court erred in admitting the following question propounded by Mr. Hughes, of coun-
364 sel for the libellant, to Mr. Anon H. Bradley, a notary public:

"Q. You will not say they were not?"

Mr. Bradley, on cross-examination, had stated, in answer to Mr. Bartlett's question:

Q. But you don't know whether the words, "for the Sun Printing and Publishing Association," were there at the time?

A. I do not.

He was then asked by Mr. Hughes: "You will *will* not say they were not?"

This question was objected to by respondent as incompetent, improper, irrelevant and immaterial, and on the special ground that the counsel should not be permitted to cross-examine his own witness. The objection was overruled, respondent duly excepted, and the witness answered: "No, I will not say they were not."

Sten. Min., pp. 173, 174.

Seventh. It appears by the record that the court erred in admitting the following question propounded by libellant's counsel to Ferdinand B. Knight:

Q. Can you state from your experience of those harbors whether that reef is a well-known reef? (referring to the reef upon which the yacht *Kanapaha* was wrecked).

This question was objected to as incompetent, irrelevant, improper and immaterial, and on the further specific ground that the witness cannot state as to the information of other persons. The objection was overruled, and an exception was duly taken by respondent.

Witness answered "Yes."

Sten. Min., pp. 201 and 204.

Eighth. It appears by the record that the court erred in allowing

the witness Knight to explain how he would get his distance off shore. The witness was asked:

Q. Can you get your distance off shore in that way?
A. Yes.

365 He was then asked:

Q. Will you explain how you do it?

The question was objected to as immaterial, incompetent, irrelevant and improper and on the ground that this is not an educational institution. Objection was overruled, and an exception was duly taken by respondent. The witness answered as follows:

A. For instance, a ship is steering north to make an object bearing northwest; the ship is going twelve miles an hour which is a mile in five minutes. Take the time when the object bears northwest and again when it bears west, and the time elapsed calculated with the distance the ship is making will give you the distance the ship is off from the object when it bears west or when it is abeam. 4 and 5 Sten. Min., p. 211.

Ninth. It appears by the record that the court erred in allowing the witness Knight to answer the following question:

Q. I will ask you whether in steaming along the north coast of Cuba on a northwesterly course to make the old Bahama channel and at a rate of from 11 to 12 knots an hour, so that at about half past seven the steamer is found about 7 miles east of the Eastern Point light, it would be possible in clear weather, if you were in sight of shore, most of the day, to ascertain up to and including sunset the true position of the steamer?

This question was objected to as immaterial, incompetent, irrelevant and improper. Objection was overruled and exception duly taken by respondent.

The witness answered: "Yes."

Sten. Min., pp. 212, 213.

Tenth. It appears by the record that the court erred in allowing the witness Knight to answer the following question:

Q. I would like to ask you whether in steaming along the north coast of Cuba at a rate of about 11 to 12 knots an hour, a northwesterly course to make the old Bahama channel, so that about half past seven o'clock in the afternoon you are found about 7

366 miles east from the Eastern Point light of Neuvitas, it would be possible by taking observations and bearings in the course of the day to ascertain whether a current was or was not setting you in towards the shore?

This question was objected to as immaterial, incompetent, irrelevant and improper. Objection was overruled and exception duly taken by respondent.

The witness answered: "It would be possible to ascertain during the day that you had been set in shore."

Sten. Min., p. 213.

Eleventh. It appears by the record that the court erred in allowing the witness Knight to answer the following questions:

Q. Suppose you were taking a northwesterly course and along the north coast of Cuba, bound for the old Bahama channel, and expecting to see Manzanilla light off Nuevitas harbor about the time it became dark, and you were at sunset about 18 miles east of Nuevitas harbor, failing to see the light at dark what would you do?

Objected to as immaterial, incompetent, irrelevant and improper and on the specific ground that it assumes facts not proven, and on the further specific ground that it is hypothetical and calls for a conclusion of the witness.

Objection was overruled and exception duly taken by respondent.

A. Stop and steer off shore.

Q. Will you explain why?

Same objection, ruling and exception.

A. It isn't safe to run for an object when you expect to see it and don't see it; it isn't safe to run your distance up.

Sten. Min., pp. 213, 214.

Twelfth. It appears by the record that the court erred in admitting in evidence pages 122 and 123 of the publication of
367 the United States Hydrographic office with reference to the Caribbean sea and the gulf of Mexico and adjacent waters, issued in 1892.

The pages were objected to as incompetent, improper, irrelevant, immaterial and as not the best evidence of the facts therein stated. Objection was overruled and exception duly taken by respondent.

Sten. Min., p. 236.

Thirteenth. It appears by the record that the court erred in admitting in evidence an extract from page 5 of the edition of 1892 of the same book, that is, the United States Hydrographic office, with reference to the Caribbean sea and the gulf of Mexico and adjacent waters, issued in 1892.

The portion read in evidence was objected to as incompetent, improper, irrelevant, immaterial and as not the best evidence of the facts therein stated. Objection was overruled, and exception duly taken by respondent.

Sten. Min., pp. 236, 237.

Fourteenth. It appears by the record that the court erred in allowing the witness Carl W. Jungen to explain a paper pasted in the cover of a book, dated May 4, 1898. The question was:

Q. Will you please explain this paper that is pasted upon the inside cover of the book and state whether it was put there subsequent to the original issue of the book or not?

This question was objected to as incompetent, improper, and as calling for an explanation as to the contents of a paper which

speaks for itself. The court allowed the question and exception was duly taken by respondent. The witness answered as follows:

A. This paper that is pasted in here—when it was pasted in I don't know; it may have been prior to May 4, certainly not after, because it is stamped May 4, 1898; this book was originally
368 issued in 1892; this is simply a form that is pasted in here to show the date of issue and also for the owner of this book to enter on the receipt the number of notices to mariners that applied for correction in this book, and also to indicate to him when he refers to that book whether he has made the correction on his own chart to conform to the notice.

Sten. Min., pp. 243, 244.

The witness thus testified to facts which could not possibly have been within his own knowledge.

The witness admitted on cross-examination in answer to the question: "When did you ever see a slip like that before?" that he could not recall when he had seen it, but that he had seen it.

Sten. Min., p. 245.

Fifteenth. It appears by the record that the court, in view of its express declaration that all evidence of value was reserved for a future hearing, erred in giving the respondent no opportunity to prove the value of the yacht *Kanapaha* or to prove that it had been grossly overvalued in the alleged charter-party. This is shown by the following portions of the record:

When Mr. Bartlett objected to a question propounded to Mr. Frank B. Jones offered as an expert on the value of yachts, the question being: "Will you state whether there is any market value for steam yachts?" the court said: "I sustain the objection, but all questions on damages are reserved without prejudice to either party, the evidence is for the present excluded."

Sten. Min., pp. 192 and 196.

On page 254 of the record Mr. Hughes said:

Mr. HUGHES: We ask for the purpose of this record that the testimony of Capt. Atkinson as to the valuation of the yacht *Kanapaha*, and as to the value of other yachts, between pages 70 and
369 80 of his deposition be stricken out; save only the statement of Capt. Atkinson that a yacht has no market value.

The COURT: I shall strike out nothing from the deposition. I will note that on this hearing, no evidence as to damages will be considered, that all such evidence is to be reserved for hereafter.

Mr. HUGHES: We do not ask that it be stricken out of the deposition but that it be stricken out from this record, the deposition being in one aspect of the case entirely before your honor.

The COURT: I rule that all the evidence in Capt. Atkinson's deposition relating to damages is not considered as received upon this present hearing, but that that evidence and all other evidence on damage is reserved for future consideration in case any decree should be found for the libellant.

Mr. BARTLETT: Evidence as to the condition of the yacht, all that stands, of course?

The COURT: Do you mean her seaworthy condition?

Mr. BARTLETT: Her general condition, yes.

The COURT: No evidence on the question of damages is considered at this time.

Mr. HUGHES: We understand that that includes the evidence as to the value of the yacht?

The COURT: Of course.

Sten. Min., pp. 254, 255.

Sixteenth. It appears by the record that the court erred in not considering and in not giving any force and effect to the evidence of Captain Stephen B. Atkinson that the yacht *Kanapaha* would not have sold in September, 1898, or at any time in the summer of 1898, prior to the accident, for $30,000.

See deposition of Stephen B. Atkinson, pp. 24, 25.

Seventeenth. It appears by the record that the court erred in not considering and in not giving any force and effect to the
370 statement of Captain Stephen B. Atkinson that the yacht *Kanapaha* in 1898 was a boat eighteen years of age, and that the said yacht had no new engines, no new saloons, and no new tubes, and had nothing new about her excepting the boilers.

Deposition of Captain Atkinson, pp. 21, 25 and 26.

And that the said yacht had a low rate of speed, about eleven or twelve knots, and a large consumption of coal (p. 20), and that she had no electric-light plant and no ice plant, such as modern steam yachts always have.

Deposition of Capt. Atkinson, p. 19.

Eighteenth. It appears by the record that the court erred in holding that the alleged contracts, the charter-parties or charters executed by Chester S. Lord, the managing editor of the Sun, were legally the contracts of The Sun, the defendant. Opinion, p. 4.

Nineteenth. It appears by the record that the court erred in holding that Chester S. Lord had such general authority as was sufficient to enable him to enter into these contracts or charters. Opinion, p. 5.

Twentieth. It appears by the record that the court erred in holding that the trustees and managing officers of the defendant had such general knowledge of his acts in hiring the yacht and such perfect means of knowledge of all the particulars had they desired to know them, as to make their acts in using the yacht under the charters as they did, a ratification of Mr. Lord's actions, and to bind them for the performance of his agreements made in their behalf. Opinion, p. 5.

Twenty-first. It appears by the record that the court erred in holding that the yacht having been a total loss, the defendant under

the agreement in the charter "to be liable and responsible for any and all loss and damage" as well as by the agreement to surrender the yacht "in as good condition as at the start fair wear and
371 tear from reasonable and proper use only excepted" as well as under the agreement of suretyship so called engaging that the hirer should "well and faithfully perform and fulfill everything in and by said agreement on his part to be kept and performed" became due and liable to the libellant for his loss and damage through its failure to return the yacht on the first of November when the charter expired. Opinion, pp. 6 and 7.

Twenty-second. It appears by the record that the court erred in holding that the libellant is entitled to a judgment for the above sum, to wit, $65,000, with interest from November 1st, and that this construction alone can reasonably give effect to the charter and intention of the parties. Opinion, p. 8.

Twenty-third. It appears by the record that the court erred in holding that some effect must be given to the clause declaring that $75,000 shall be considered and taken as the value of the yacht (Opinion, p. 8), because the sum of $75,000 was not inserted in the agreement of suretyship as liquidated damages but was inserted as a penalty.

Twenty-fourth. It appears by the record that the court erred in holding that the value fixed, namely, $75,000, should be taken as the agreed value of the yacht at the beginning of the charter. Opinion, p. 8.

Twenty-fifth. It appears by the record that the court erred in holding that any different construction than that taken by the court, would manifestly contradict the presumed intention. Opinion, p. 9.

Twenty-sixth. It appears by the record that the court erred in holding that the insuring of the yacht in the sum of $60,000 was at least to some extent indicative of the approximate liability for the yacht herself as understood by the defendant. Opinion, p. 9.

Twenty-seventh. It appears by the record that the court erred in not granting to the defendant before final judgment an op-
372 portunity to show that the fair market value of the yacht *Kanapaha* was far less than $65,000 or $75,000.

Twenty-eighth. It appears by the record that the court erred in not holding that even if there was a ratification by the defendant's trustees of the hiring of the yacht, there was no ratification by said trustees of the alleged valuation of the yacht at the sum of $75,000.

Twenty-ninth. It appears by the record that the court erred in granting a decree to the libellant for $65,000 with interest and costs.

Thirtieth. It appears by the record that the court erred in not rendering judgment for the defendant, dismissing the libel with costs.

And the said The Sun Printing and Publishing Association prays that the judgment may be reversed, annulled and altogether held

for naught, and that it may be restored to all things which it hath lost by occasion of said judgment.

Dated New York, October 7th, 1899.

FRANKLIN BARTLETT,
Attorney for The Sun Printing and Publishing Association, Respondent and Appellant, 82 Times Building, Borough of Manhattan, New York City.

(Endorsed:) Assignment of errors. Filed Oct. 9, 1899.

373 District Court of the United States for the Southern District of New York.

WILLIAM L. MOORE, Libellant,
against
THE SUN PRINTING AND PUBLISHING ASSOCIATION, Appellant.

SIRS: Please take notice that the libellant above named hereby appeals to the United States circuit court of appeals for the second circuit, from the final decree and judgment entered herein on the 23d day of August, 1899, and from each and every part thereof.

Dated New York, September 9th, 1899.

Yours, &c.,

ZABRISKIE, BURRILL & MURRAY,
Proctors for Libellant, 21 Broad St., New York.

To Franklin Bartlett, Esq., proctor for respondent; Samuel H. Lyman, Esq., clerk of the district court of the United States for the southern district of New York.

(Endorsed:) Notice of appeal. Filed Sept. 9, 1899.

374 United States Circuit Court of Appeals for the Second Circuit.

WILLIAM L. MOORE, Appellant,
against
THE SUN PRINTING AND PUBLISHING ASSOCIATION.

The above-named libellant and appellant hereby assigns error to the decree of the district court of the United States for the southern district of New York in the above-entitled cause, as follows:

It appears by the record that the court erred in limiting the recovery by the libellant against the respondent, The Sun Printing and Publishing Association, to the sum of $65,000 and interest thereon from October 1st, 1898, inasmuch as the libellant was entitled to recover the sum of $75,000 and interest thereon from said date. For it appears from the record that in and by the charter-party and agreement of suretyship referred to in the libel herein it was provided that for the purpose of said charter the value of the yacht should be considered and taken at the sum of $75,000, and that said respondent would be and become liable for any and all losses and damages not exceeding the sum of $75,000, which might

be sustained by libellant by reason of such loss or damage, and by reason of the breach of any of the terms or conditions of said charter-party.

And the court erred in failing to give full force and effect to such provisions and in holding that the charter hire of $10,000 paid to libellant at or before the time of the execution and delivery of said charter-party should be considered and taken as a payment
375 on account of said sum of $75,000, and should be deducted therefrom in determining the liability of the respondent under said charter-party and agreement of suretyship.

Opinion, pages 2, and 8 to 11.

Dated New York, October 11th, 1899.

ZABRISKIE, BURRILL & MURRAY,
Proctors for William L. Moore, Libellant and Appellant.

(Endorsed:) Assignment of errors. Filed Oct. 12, 1899.

376 UNITED STATES OF AMERICA, *Southern District of New York.*

WILLIAM L. MOORE, Lib'l't and Appellant,
vs.
THE SUN PRINTING AND PUBLISHING ASSOCIATION, Resp'd't and Appellant.

I, Samuel H. Lyman, clerk of the district court of the United States of America, for the southern district of New York, do hereby certify that the foregoing is a correct transcript of the record of the district court in the above-entitled cause made up pursuant to rule No. 4 in admiralty of the United States circuit court of appeals, for the second circuit.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 23d day of October, in the year of our
[SEAL.] Lord one thousand eight hundred and ninety-nine, and of the Independence of the said United States the one hundred and twenty-fourth.

SAMUEL H. LYMAN, *Clerk.*

377 United States Circuit Court of Appeals for the Second Circuit, October Term, 1899.

Submitted March 9, 1900; decided April 3, 1900.

WILLIAM L. MOORE, Libellant, Appellant,
vs.
THE SUN PRINTING AND PUBLISHING ASSOCIATION, Respondent, Appellant.

No. 123. Appeals from the District Court of the United States for the Southern District of New York. Before Judges Wallace, Lacombe, and Shipman.

WALLACE, *Circuit Judge:*

The yacht *Kanapaha* owned by the libellant was wrecked by stranding upon a reef on the northerly shore of the island of Cuba,

about two and one-half miles from the shore and about seven and one-half miles from Nuevitas, while proceeding westward to the port of Havana, and became a total loss. Her owner brought this action to recover her value against the Sun Printing and Publishing Association as the charterer of the yacht under whose control and management she was at the time. The charter provided that at the expiration of the charter term (four months, from June 1st to October 1st, 1898), the charterer would return the yacht "in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted." It also provided that the charterer should be "liable and responsible for any and all loss and damage to hull, machinery, equipment, tackle, spars, furniture, and the like," and that the charterer should "procure security and guaranty to and for the owner in the sum of $75,000 to secure any and all losses and damages which may occur to said boat or its belongings which
may be sustained by the owner by reason of such loss or
378 damage and by reason of the breach of any of the terms or conditions of this contract." The libel alleged the breach of these conditions, and also alleged that the yacht was lost by the negligent navigation of the charterer. The court below decreed in favor of the libellant, awarding him a recovery of $65,000 with interest. Both parties have appealed from the decree, the defendant insisting that it was not liable at all, and the libellant insisting that the damages awarded should have been $75,000 and interest.

That the Sun Printing and Publishing Association was the charterer of the yacht, notwithstanding Chester S. Lord was named as such in the contract, and that the corporation sanctioned and ratified his act in entering into the charter, we entertain no doubt; and we fully agree with the learned judge who decided the cause in the court below in respect to these propositions, and deem it unnecessary to enlarge upon the very satisfactory reasons assigned in his opinion. As the defendant was the real principal, the libellant was entitled to enforce the contract against it notwithstanding it purported to be a contract of the agent. New York & Charleston Steamship Co. *v.* Harbison (21 Blatch., 332, 336).

It is insisted for the charterer that the yacht perished without any fault on the part of those who were navigating her, and consequently that the case is one for the application of the principle, well settled in the law of bailments, that the hirer is absolved from further obligation where the hired thing is destroyed without his fault, so that redelivery to the bailor is impossible. This principle is deduced from the implied conditions of a contract of bailment by which the bailee only undertakes to exercise due care in the use of the article hired, and to restore it to the bailor in as good condition as when received, unless it be destroyed or deteriorated by natural decay or by external means without his default. The rule of the law of bailments does not conflict with the general principle that where a party by his own contract creates a duty or obligation upon himself he is bound to make it good, or answer
in damages, although prevented from performance by
379 inevitable accident. This principle is applicable to contracts of hiring as well as to all other contracts, and its appli-

cation is illustrated in numerous decisions in respect to a great variety of contracts. Thus it has always been settled that when a lessee has covenanted in his lease to keep the demised premises in good order, and surrender them to the lessor at the expiration of the term in as good order as they were originally, he is bound to rebuild although the premises are meantime destroyed by an accidental fire. Beach *v.* Crain (2 N. Y., 86); Hoy *v.* Holt (91 Pa. St., 88); Leavitt *v.* Fletcher (92 Mass., 119); Coler *v.* Celluloid Co. (39 N. J. Law, 326); Proctor *v.* Keith (12 B. Mon., 252); David *v.* Ryan (47 Iowa, 642). The principle has been applied with great strictness in charter-party contracts. Thus in Pope *v.* Bavidge (10 Ex., 33) where the charter provided that the vessel should make six specified voyages not later than a specified day, it was held to be no defense in an action by the charterer against the ship-owner that during the first three voyages the vessel was so damaged by accidents of the seas and navigation that she could not be repaired in time to perform the remaining voyages. In Burrell *v.* Crossman (35 U. S. Ap., 608) we had occasion in this court to apply it in the case of a charter-party and held that, inasmuch as the contract contained an absolute obligation to do certain acts within a time definitely fixed, non-performance was not excused although performance became impossible by events occurring without the fault of the promisor. In that case the defense was that performance was made impossible by the act of the public enemy, the war vessels of a foreign power. The cases which are sometimes referred to as exceptions to the general rule are not exceptions, but were those in which impossibility of performance existed when the contract was made and its obligations were held discharged upon the ground of mutual mistake, or those where the contract itself implied a condition that performance should be dependent upon the continued existence of the subject of the contract. The general doctrine may be stated in the lan-
380 guage of the court in Bailey *v.* Crespigny (L. R., 4 Q. B., 185):

"There can be no doubt that a man may by an absolute contract bind himself to perform things which subsequently become impossible, or to pay damages for the non-performance, and this construction is to be put upon an unqualified undertaking, where the event which causes the impossibility was or might have been anticipated and guarded against in the contract, or where the impossibility arises from the act or default of the promisor. But where the event is of such a character that it cannot reasonably be supposed to have been in the contemplation of the contracting parties when the contract was made, they will not be held bound by general words which, though large enough to include, were not used with reference to the possibility of the particular contingency which afterwards happened." A contract of hiring presupposes the continued existence of the thing hired during the term of hiring, and because the parties must have known that otherwise it could not be fulfilled and the whole contract is founded upon that understanding, the courts have construed express promises for the redelivery of the thing in as good condition as when received as intended merely to stand for the implied condition, and not as intended to impose a

more stringent liability upon the hirer. Such a case was Young *v.* Leary (135 N. Y., 569). That was an action to recover of a charterer the value of a vessel which was destroyed during the charter term by fire, and was brought for the breach of a condition in the charter to deliver the vessel to the owner at its termination "in the same good condition as she is now, ordinary wear and tear excepted." The court read the condition as intended to create no other obligation than would have been raised by implication without it, and said: "When language is used which does no more than express in terms the same obligation which the law raises from the facts of the transaction itself, the party using the language is no further bound than he would have been without it." Decisions to the same effect are Ames *v.* Belden (17 Barb., 513), and Hyland *v.* Paull (33 Barb., 241). On the other
381 hand the supreme court of Massachusetts decided in an action brought to recover damages to the article hired caused by accidental injuries, where the contract contained a condition to return it "in as good order as when received, customary wear and tear excepted," that the bailee was not excused from performance. Harvey *v.* Murray (136 Mass., 377). In Drake *v.* White (117 Mass., 10) there was a bailment of personal property by a debtor who pledged it as collateral security for a loan to the defendants upon the express promise of the latter "to deliver the same, or its equivalent in money," on the payment of the loan. The court, holding the creditor not discharged by the destruction of the property by fire without his fault, based its decision upon the terms of the express contract to redeliver, and used this language: "If, in the common case of a pledge, the common-law contract was reduced to writing, it would contain among other things a stipulation that the pledgee should not be responsible for the loss of the property, unless some want of reasonable and ordinary care on his part were the cause of such loss. In the present case the parties have reduced their contract to writing, and have omitted to attach to the defendant's liability for the property any limitation whatever. On the contrary, their express promise is to do one or the other of two things: either to return the property specifically, or to pay for it in money."

The question in all cases of this kind is a question of the construction of the contract, and the defense of impossibility of performance has been sustained, not because contracts of hiring are not within the general rule, but because the terms of the particular contract were thought to withhold it from the rule. Dexter *v.* Norton (47 N. Y., 62).

In the case of Warth's Executrix *v.* Mack (51 U. S. Ap., 133) this court applied the rule to a contract of bailment, and held the promisor not to be released from performance by impossibility. Our decision proceeded upon the ground that it was inferable from the various provisions of the contract that the bailee was not to
382 be absolved in case of the destruction by fire without his fault of the subject of the bailment. In the present case the charterer not only explicitly undertook by the contract to return

the yacht at the expiration of the term of hiring in as good condition as at the beginning, "fair wear and tear from reasonable and proper use only excepted," but also explicitly undertook to be responsible for any loss or damage to any part of the vessel, her equipment and furniture, and also to secure the owner in a specified sum against all losses and damages which might occur to her. It is impossible to construe such a contract as contemplating that the loss of the yacht by *vis major* or inevitable accident should discharge the charterer from further liability. The case is one where the promisor must fulfill the terms of his promise, or respond in damages for a breach.

We are unable to agree with the court below that the libellant was entitled to recover only $65,000 as damages for the loss of the yacht. The charter contained this provision: "For the purpose of this charter the value of the yacht shall be considered and taken at the sum of $75,000." It appears from the testimony in the record, and indeed the fact is one of which the court may take judicial notice, that the market value of yachts is a very uncertain quantity. These vessels, built for pleasure purposes and to suit the tastes and caprices of the original owner, seldom command approximately their real value when offered for sale in the market, and fluctuate in the estimation of purchasers with the notions and fashions of the day. As Captain Atkinson testifies, "A yacht has no value except a fancy valuation." It is competent for the parties themselves to fix the value of given property as the basis for ascertaining damages in the event of destruction or injury to it, and the agreement is, in the absence of fraud or mutual mistake, conclusive upon them. The Providence & Stonington Steamship Co. *v.* The Phœnix Insurance Company (89 N. Y., 559); Hart *v.* Penn. R. R. Co. (112 U. S., 331); Graves *v.* Lake Shore R. R. Co. (137 Mass., 33); New
383 York, N. H. & Hart. R. R. *v.* Sayles (58 U. S. Ap., 18). Even in cases where the question arises whether a sum fixed in the contract as damages for a breach is to be treated as a penalty or as liquidated damages the courts treat it as liquidated damages when, considering the subject-matter and nature of the agreement and the difficulty of estimating exact damages, the intention of the parties to consider it as liquidated damages may be inferred.

The learned judge in the court below was of the opinion that the sum fixed was intended as the limit of the liability of the charterer for a breach of all the conditions of the contract including those of the payment of the charter hire. In reaching this conclusion he placed emphasis upon another condition of the charter providing that the liability of the charterer should "in no case exceed the sum of $75,000," and held that inasmuch as the charter hire, $10,000, had been paid by the charterer, the latter's liability did not exceed $65,000.

We think it was the meaning of the provision fixing the value of the yacht to fix it for the purpose of determining her value in case of her injury or destruction as the basis of damages, and that this was practically the only purpose contemplated by the provision. It surely was unnecessary to agree upon the value of the vessel with

any reference to the payment of the charter hire, or of demurrage for detention beyond the charter period, or for the fulfillment of any of the conditions in which the value of the vessel could not affect the amount of damages arising from the breach.

These conclusions require a modification of the decree in the court below. The cause is accordingly remitted to that court with instructions to decree for the libellant in the sum of $75,000 and interest from October 1, 1898. The libellant is entitled to the costs of this court.

Franklin Bartlett, for the respondent, appellant.
George Zabriskie, for the libellant, appellant.

384 At a stated term of the United States circuit court of appeals in and for the second circuit, held at the court-rooms, in the post-office building, in the city of New York, on the 13th day of April, one thousand nine hundred.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

WILLIAM L. MOORE, Libellant, Appellant,
vs.
SUN PRINTING & PUBLISHING ASSOCIATION, Respondent, Appellant.

Appeals from the district court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of record from the district court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the decree of said district court be, and it hereby is, modified, and cause remanded to the district court with instructions to enter a decree for the libellant in the sum of $75,000 and interest from October 1, 1898, costs of this court to the libellant.

It is further ordered that a mandate issue to the said district court in accordance with this decree.

W. J. W.
E. H. L.
N. S.

385 [Endorsed:] United States circuit court of appeals, second circuit. Wm. L. Moore *vs.* Sun P'nt'g & Pub. Ass'n. Order for mandate. United States circuit court of appeals, second circuit. Filed Apr. 17, 1900. Wm. Parkin, clerk.

386 UNITED STATES OF AMERICA,
Southern District of New York, } ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages numbered from 1 to 385, inclusive, contain a true and com-

plete transcript of the record and proceedings had in said court in the case of William L. Moore against Sun Printing & Publishing Association, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 17th day of April, in the year of our Lord one thousand nine hundred, and of the Independence of the said United States the one hundred and twenty-fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled.]

387 [Endorsed:] File No., 17,732. U. S. C. C. of appeals, 2nd circuit. Term No., 262. The Sun Printing and Publishing Association, petitioner, *vs.* William L. Moore. Filed April 30, 1900.

388 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which William L. Moore is appellant and The Sun Printing & Publishing Association is appellee, and The Sun Printing & Publishing Association is appellant and William L. Moore is appellee, which suit was removed into the said circuit court of appeals by virtue of appeals from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and

389 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fifteenth day of May, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

390 [Endorsed:] Supreme Court of the United States, October term, 1899. No. 618. The Sun Printing and Publishing Association *vs.* William L. Moore. Writ of certiorari. United States circuit court of appeals, second circuit. Filed May 18, 1900. William Parkin, clerk.

391 United States Circuit Court of Appeals for the Second Circuit.

WILLIAM L. MOORE, Libellant, Appellant,
against
THE SUN PRINTING AND PUBLISHING ASSOCIATION, Respondent, Appellant.

It is hereby stipulated that the certified copy of the transcript of record now on file in the Supreme Court of the United States shall be taken as a return to the writ of certiorari granted by the Supreme Court of the United States on May 15th, 1900, in the case of The Sun Printing and Publishing Association against William L. Moore, No. 618, October term, 1899.

Dated New York, May 18th, 1900.

ZABRISKIE, BURRILL & MURRAY,
Proctors for Libellant.

FRANKLIN BARTLETT,
Proctor for Respondent.

Endorsed: U. S. circuit court of appeals. William L. Moore against The Sun Printing and Publishing Association. Stipulation. United States circuit court of appeals, second circuit. Filed May 19, 1900. William Parkin, clerk.

392 To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under the direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, May 19, 1900.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[Ten-cent U. S. internal-revenue stamp, canceled 5, 19, 1900. W. P.]

393 [Endorsed:] United States circuit court of appeals, second circuit. William L. Moore *vs.* Sun Printing & Publishing Association. Return to writ of certiorari.

394 [Endorsed:] File No., 17,732. Supreme Court U. S., October term, 1900. Term No., 262. The Sun Printing & Publishing Association, petitioner, *vs.* Wm. L. Moore. Writ of certiorari and return. Filed May 25, 1900.